

1995
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTY-FOURTH LEGISLATURE
Convened January 9, 1995. Adjourned April 23, 1995.

1ST SPECIAL SESSION
FIFTY-FOURTH LEGISLATURE
Convened April 24, 1995. Adjourned May 23, 1995.

2ND SPECIAL SESSION
FIFTY-FOURTH LEGISLATURE
Convened May 24, 1995. Adjourned May 25, 1995.



Published at Olympia by the Statute Law Committee under
Chapter 6, Laws of 1969.

DENNIS W. COOPER
Code Reviser

WASHINGTON SESSION LAWS GENERAL INFORMATION

1. 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 books, which are published as soon as possible following the session, at random dates as accumulated; followed by
- (ii) a permanent hardbound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating Revised Code of Washington sections affected.

(b) *Where and how obtained—price.* Both the temporary and permanent session laws may be ordered from the Statute Law Committee, Legislative Building, P.O. Box 40552, Olympia, Washington 98504-0552. The temporary pamphlet edition costs \$5.40 per set (\$5.00 plus \$0.40 for state and local sales tax at 7.9%). The permanent edition costs \$43.16 per two-volume set (\$40.00 plus \$3.16 for state and local sales tax at 7.9%). All orders must be accompanied by payment.

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) Vetoed 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 1995 regular session to be July 23, 1995 (midnight July 22nd). The pertinent date for the Laws of the 1995 1st special session is August 22, 1995 (midnight August 21). The pertinent date for the Laws of the 1995 2nd special session is August 24, 1995 (midnight August 23).

(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

A cumulative index and tables of all 1995 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

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CHAPTER I

[Initiative 607]

DENTURISTS REGULATED

AN ACT Relating to denturism; amending RCW 18.120.020 and 18.130.040; adding a new section to chapter 48.20 RCW; adding a new section to chapter 48.21 RCW; adding a new section to chapter 48.43 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.46 RCW; adding a new chapter to Title 18 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The state of Washington finds that to realize the state's current statutory policy of regulating health professions at the least restrictive level consistent with the public interest, a program of licensure for denturists should be established. The intent of the legislature is to help assure the public's health, provide a mechanism for consumer protection, and offer cost-effective alternatives for denture care services and products to individual consumers and the state.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Board" means the state board of denture technology.
- (2) "Denture" means a removable full or partial upper or lower dental appliance to be worn in the mouth to replace missing natural teeth.
- (3) "Denturist" means a person licensed under this chapter to engage in the practice of denturism.
- (4) "Department" means the department of health.
- (5) "Practice of denturism" means:
 - (a) Making, placing, constructing, altering, reproducing, or repairing a denture; and
 - (b) Taking impressions and furnishing or supplying a denture directly to a person or advising the use of a denture, and maintaining a facility for the same.
- (6) "Secretary" means the secretary of health or the secretary's designee.

NEW SECTION. Sec. 3. (1) Before making and fitting a denture, a denturist shall examine the patient's oral cavity.

(a) If the examination gives the denturist reasonable cause to believe that there is an abnormality or disease process that requires medical or dental treatment, the denturist shall immediately refer the patient to a dentist or physician. In such cases, the denturist shall take no further action to manufacture or place a denture until the patient has been examined by a dentist or physician and the dentist or physician gives written clearance that the denture will pose no threat to the patient's health.

(b) If the examination reveals the need for tissue or teeth modification in order to assure proper fit of a full or partial denture, the denturist shall refer the patient to a dentist and assure that the modification has been completed before taking an impression for the completion of the denture.

(2) A denturist who makes or places a denture in a manner not consistent with this section is subject to the sanctions provided in chapter 18.130 RCW, the uniform disciplinary act.

(3) A denturist must successfully complete special training in oral pathology prescribed by the board, whether as part of an approved associate degree program or equivalent training, and pass an examination prescribed by the board, which may be a part of the examination for licensure to become a licensed denturist.

NEW SECTION. Sec. 4. No person may represent himself or herself as a licensed denturist or use any title or description of services without applying for licensure, meeting the required qualifications, and being licensed as a denturist by the department, unless otherwise exempted by this chapter.

NEW SECTION. Sec. 5. Nothing in this chapter prohibits or restricts:

(1) The practice of a profession by an individual who is licensed, certified, or registered under other laws of this state and who is performing services within the authorized scope of practice;

(2) The practice of denturism by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed by the laws and regulations of the United States;

(3) The practice of denturism by students enrolled in a school approved by the department. The performance of services must be pursuant to a course of instruction or an assignment from an instructor and under the supervision of an instructor; or

(4) Work performed by dental labs and dental technicians under the written prescription of a dentist.

NEW SECTION. Sec. 6. (1) The state board of denture technology is created. The board shall consist of seven members appointed by the secretary as follows:

(a) Four members of the board must be denturists licensed under this chapter, except initial appointees, who must have five years' experience in the field of denturism or a related field.

(b) Two members shall be selected from persons who are not affiliated with any health care profession or facility, at least one of whom must be over sixty-five years of age representing the elderly.

(c) One member must be a dentist licensed in the state of Washington.

(2) The members of the board shall serve for terms of three years. The terms of the initial members shall be staggered, with the members appointed under subsection (1)(a) of this section serving two-year and three-year terms initially and the members appointed under subsection (1) (b) and (c) of this section serving one-year, two-year, and three-year terms initially. Vacancies shall be filled in the same manner as the original appointments are made. Appointments to fill vacancies shall be for the remainder of the unexpired term of the vacant position.

(3) No appointee may serve more than two consecutive terms.

(4) Members of the board shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(5) A member of the board may be removed for just cause by the secretary.

NEW SECTION. Sec. 7. (1) The board shall elect a chairperson of the board annually. The same person may not hold the office of chairperson for more than three years in succession.

(2) A majority of the board constitutes a quorum for all purposes, and a majority vote of the members voting governs the decisions of the board.

NEW SECTION. Sec. 8. The board shall:

(1) Determine the qualifications of persons applying for licensure under this chapter;

(2) Prescribe, administer, and determine the requirements for examinations under this chapter and establish a passing grade for licensure under this chapter;

(3) Adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter;

(4) Set all licensure, examination, and renewal fees in accordance with RCW 43.70.250;

(5) Advise the secretary on the hiring of clerical, administrative, investigative, and other staff as needed to implement this chapter and act on behalf of the board;

(6) Evaluate and designate those schools from which graduation will be accepted as proof of an applicant's completion of coursework requirements for licensure; and

(7) Act as the disciplining authority under this chapter in accordance with the uniform disciplinary act, chapter 18.130 RCW, which governs unlicensed practice, the issuance and denial of licenses, and the disciplining of license holders under this chapter.

NEW SECTION. Sec. 9. The secretary shall:

(1) Issue licenses for the practice of denturism under this chapter;

(2) Administer oaths and subpoena witnesses for the purpose of carrying out the activities authorized under this chapter;

(3) Establish forms and procedures necessary to administer this chapter;

(4) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter and act on behalf of the board; and

(5) Issue licenses of endorsement for applicants from states that maintain standards of practice substantially equivalent to this state.

NEW SECTION. Sec. 10. The secretary shall issue a license to practice denturism to an applicant who submits a completed application, pays the appropriate fees, and meets the following requirements:

(1) A person currently licensed to practice denturism under statutory provisions of another state or federal enclave that maintains standards of practice

substantially equivalent to this chapter shall be licensed without examination upon providing the department with the following:

(a) Proof of successfully passing a written and clinical examination for denturism in a state that the board has determined has substantially equivalent standards as those in this chapter in both the written and clinical examinations; and

(b) An affidavit from the state agency where the person is licensed or certified attesting to the fact of the person's licensure or certification.

(2) A person graduating from a formal denturism program shall be licensed if he or she:

(a) Documents successful completion of formal training with a major course of study in denturism of not less than two years in duration at an educational institution recognized by the board; and

(b) Passes a written and clinical examination approved by the board.

(3) An applicant who does not otherwise qualify under subsection (1) or (2) of this section shall be licensed within two years of the effective date of this act if he or she:

(a) Provides to the board three affidavits by persons other than family members attesting to the applicant's employment in denture technology for at least five years, or provides documentation of at least four thousand hours of practical work within denture technology;

(b) Provides documentation of successful completion of a training course approved by the board or completion of an equivalent course approved by the board; and

(c) Passes a written and clinical examination administered by the board.

NEW SECTION. Sec. 11. The board shall administer the examinations for licensing under this chapter, subject to the following requirements:

(1) Examinations shall determine the qualifications, fitness, and ability of the applicant to practice denturism. The test shall include a written examination and a practical demonstration of skills.

(2) Examinations shall be held at least annually.

(3) The first examination shall be conducted not later than July 1, 1995.

(4) The written examination shall cover the following subjects: (a) Head and oral anatomy and physiology; (b) oral pathology; (c) partial denture construction and design; (d) microbiology; (e) clinical dental technology; (f) dental laboratory technology; (g) clinical jurisprudence; (h) asepsis; (i) medical emergencies; and (j) cardiopulmonary resuscitation.

(5) Upon payment of the appropriate fee, an applicant who fails either the written or practical examination may have additional opportunities to take the portion of the examination that he or she failed.

The board or secretary may hire trained persons licensed under this chapter to administer and grade the examinations or may contract with regional examiners who meet qualifications adopted by the board.

NEW SECTION. Sec. 12. The department shall charge and collect the fees established by the board. Fees collected shall be placed in the health professions account under RCW 43.70.320.

NEW SECTION. Sec. 13. (1) A license issued under section 9 of this act is valid for two years. A license may be renewed by paying the renewal fee.

(2) If a license issued is effective on a date other than July 1, it shall be valid until the following June 30.

(3) The license shall contain, on its face, the address or addresses where the license holder will perform the denturist services.

NEW SECTION. Sec. 14. The board shall establish by rule the administrative requirements for renewal of licenses to practice denturism, but shall not increase the licensure requirements provided in this chapter. The board shall establish a renewal and late renewal penalty in accordance with RCW 43.70.250. Failure to renew shall invalidate the license and all privileges granted by the license. The board shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures and prerequisites for relicensure.

NEW SECTION. Sec. 15. (1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice denturism in this state without first activating the license.

(2) The inactive renewal fee shall be established by the board. Failure to renew an inactive license shall result in cancellation in the same manner as failure to renew an active license results in cancellation.

(3) An inactive license may be placed in an active status upon compliance with rules established by the board.

(4) The provisions relating to denial, suspension, and revocation of a license are applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed.

NEW SECTION. Sec. 16. Notwithstanding any other provision of state law, a licensed denturist may enter into a partnership or other business association with a dentist, provided that such association does not impede the independent professional judgment of either party.

NEW SECTION. Sec. 17. This chapter may be known and cited as the Washington state denturist act.

Sec. 18. RCW 18.120.020 and 1989 c 300 s 14 are each amended to read as follows:

The definitions contained in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant group" includes any health professional group or organization, any individual, or any other interested party which proposes that any health

professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(4) "Health professions" means and includes the following health and health-related licensed or regulated professions and occupations: (~~Podiatry~~) podiatric medicine and surgery under chapter 18.22 RCW; chiropractic under chapters 18.25 and 18.26 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; denturism under chapter 18.— RCW (sections 2 through 17 of this act); dispensing opticians under chapter 18.34 RCW; hearing aids under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW; nursing home administration under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ocularists under chapter 18.55 RCW; osteopathy and osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters 18.71, 18.71A, and 18.72 RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses under chapter 18.78 RCW; psychologists under chapter 18.83 RCW; registered nurses under chapter 18.88 RCW; occupational therapists licensed pursuant to chapter 18.59 RCW; respiratory care practitioners certified under chapter 18.89 RCW; veterinarians and animal technicians under chapter 18.92 RCW; health care assistants under chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW; acupuncturists certified under chapter 18.06 RCW; persons registered or certified under chapter 18.19 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; and nursing assistants registered or certified under chapter 18.88A RCW.

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence

of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed health professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency.

Sec. 19. RCW 18.130.040 and 1993 c 367 s 4 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 18.88A RCW;
- (xiii) Health care assistants certified under chapter 18.135 RCW;
- (xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;
- (xv) Sex offender treatment providers certified under chapter 18.155 RCW;

and

(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))~~ board on fitting and dispensing of 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;
- (xi) The board of physical therapy as established in chapter 18.74 RCW;
- (xii) The board of occupational therapy practice as established in chapter 18.59 RCW;
- (xiii) The board of practical nursing as established in chapter 18.78 RCW;
- (xiv) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;
- (xv) The board of nursing as established in chapter 18.88 RCW; ~~((and))~~
- (xvi) The veterinary board of governors as established in chapter 18.92 RCW; and
- (xvii) Denturists licensed under chapter 18.— RCW (sections 2 through 17 of this act).

(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.

NEW SECTION. Sec. 20. Sections 2 through 17 of this act shall constitute a new chapter in Title 18 RCW.

NEW SECTION. Sec. 21. A new section is added to chapter 48.20 RCW to read as follows:

Notwithstanding any provision of any disability insurance contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.— RCW (sections 2 through 17 of this act) if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW.

NEW SECTION. Sec. 22. A new section is added to chapter 48.21 RCW to read as follows:

Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.— RCW (sections 2 through 17 of this act) if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW.

NEW SECTION. Sec. 23. A new section is added to chapter 48.43 RCW to read as follows:

Notwithstanding any provision of any certified health plan covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.— RCW (sections 2 through 17 of this act) if (1) the service performed was within the lawful scope of such person's license, and (2) such plan would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW.

NEW SECTION. Sec. 24. A new section is added to chapter 48.44 RCW to read as follows:

Notwithstanding any provision of any health care service contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed

under chapter 18.— RCW (sections 2 through 17 of this act) if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW.

NEW SECTION. Sec. 25. A new section is added to chapter 48.46 RCW to read as follows:

Notwithstanding any provision of any health maintenance organization agreement covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.— RCW (sections 2 through 17 of this act) if (1) the service performed was within the lawful scope of such person's license, and (2) such agreement would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW.

NEW SECTION. Sec. 26. 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 18, 1994.

Approved by the People of the State of Washington in the General Election on November 8, 1994.

CHAPTER 2

[Senate Bill 5038]

HEALTH BENEFITS AND STANDARDS—EXTENSION OF DEADLINES

AN ACT Relating to modifying time periods for adoption of health benefits and standards; amending RCW 43.72.090, 43.72.180, 70.47.020, and 70.47.060; and declaring an emergency.

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

Sec. 1. RCW 43.72.090 and 1993 c 492 s 427 are each amended to read as follows:

(1) On and after (~~(July 1)~~) December 31, 1995, no person or entity in this state shall provide the uniform benefits package and supplemental benefits as defined in RCW 43.72.010 without being certified as a certified health plan by the insurance commissioner.

(2) On and after (~~(July 1)~~) December 31, 1995, no certified health plan may offer less than the uniform benefits package to residents of this state and no registered employer health plan may provide less than the uniform benefits package to its employees and their dependents.

(3) The health services commission may authorize renewal or continuation until December 31, 1996, of health care service contracts, disability group insurance, or health maintenance policies in effect on December 31, 1995.

Sec. 2. RCW 43.72.180 and 1993 c 492 s 454 are each amended to read as follows:

The legislature may disapprove of the uniform benefits package developed under RCW 43.72.130 and medical risk adjustment mechanisms developed under RCW 43.72.040(7) by an act of law at any time prior to the ~~((thirtieth))~~ last day of the following regular legislative session. If such disapproval action is taken, the commission shall resubmit a modified package to the legislature within fifteen days of the disapproval. If the legislature does not disapprove or modify the package by an act of law by the end of that regular session, the package is deemed approved.

Sec. 3. RCW 70.47.020 and 1994 c 309 s 4 are each amended to read as follows:

As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment on a prepaid capitated basis for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, on a prepaid capitated basis to a defined patient population enrolled in the plan and in the managed health care system. On and after ~~((July 1))~~ December 31, 1995, "managed health care system" means a certified health plan, as defined in RCW 43.72.010.

(4) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children, not eligible for medicare, who resides in an area of the state served by a managed health care system participating in the plan, whose gross family income at the time of enrollment does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, who the administrator determines shall not have, or shall not have voluntarily relinquished health insurance more comprehensive than that offered by the plan as of the effective date of enrollment, and who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan.

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children, not eligible for medicare, who resides in an area of the state served by a managed health care system participating in the plan, who the administrator determines shall not have, or shall not have voluntarily relinquished health insurance more comprehensive than that offered by the plan as of the effective date of enrollment, and who chooses to obtain basic health care coverage from a particular managed health care system, and

who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(7) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee or a nonsubsidized enrollee.

(8) "Rate" means the per capita amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized and nonsubsidized enrollees in the plan and in that system.

Sec. 4. RCW 70.47.060 and 1994 c 309 s 5 are each amended to read as follows:

The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care, which subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for groups of subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.42.080, and such other factors as the administrator deems appropriate. On and after ~~(July 1)~~ December 31, 1995, the uniform benefits package adopted and from time to time revised by the Washington health services commission pursuant to RCW 43.72.130 shall be implemented by the administrator as the schedule of covered basic health care services. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the

medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that the services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (9) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (10) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator, but in no case shall the payment made on behalf of the enrollee exceed the total premiums due from the enrollee.

(3) To design and implement a structure of copayments due a managed health care system from subsidized and nonsubsidized enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services. On and after July 1, 1995, the administrator shall endeavor to make the copayments structure of the plan consistent with enrollee point of service cost-sharing levels adopted by the Washington health services commission, giving consideration to funding available to the plan.

(4) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(5) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(8) To receive periodic premiums from or on behalf of subsidized and nonsubsidized enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized or nonsubsidized enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and at least semiannually thereafter, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If, as a result of an eligibility review, the administrator determines that a subsidized enrollee's income exceeds twice the federal poverty level and that the enrollee knowingly failed to inform the plan of such increase in income, the administrator may bill the enrollee for the subsidy paid on the enrollee's behalf during the period of time that the enrollee's income exceeded twice the federal poverty level. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to re-enroll in the plan.

(10) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator shall require that a business owner pay at

least fifty percent of the nonsubsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

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 Senate January 25, 1995.

Passed the House February 1, 1995.

Approved by the Governor February 3, 1995.

Filed in Office of Secretary of State February 3, 1995.

CHAPTER 3

[House Bill 1039]

CITIZENS' COMMISSION ON SALARIES—MEMBERSHIP INCREASE

AN ACT Relating to altering the Washington citizens' commission on salaries for elected officials by increasing the number of commission members selected by lot from registered voters, providing attendance requirements, and clarifying procedures; amending RCW 43.03.305 and 43.03.310; and declaring an emergency.

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

Sec. 1. RCW 43.03.305 and 1993 c 281 s 46 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))~~ sixteen members appointed by the governor as provided in this section.

(1) ~~((Eight))~~ Nine of the ~~((fifteen))~~ sixteen 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))~~ persons are selected for appointment to full terms on the commission under subsection (3) of this section. 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 or if, following the person's appointment, the person's position on the commission becomes vacant before the end of the person's term of office.

(2) The remaining seven of the ~~((fifteen))~~ sixteen 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 chair of the 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.

The unexcused absence of any person who is a member of the commission from two consecutive meetings of the commission shall constitute the relinquishment of that person's membership on the commission. Such a relinquishment creates a vacancy in that person's position on the commission. A member's absence may be excused by the chair of the commission upon the member's written request if the chair believes there is just cause for the absence. Such a request must be received by the chair before the meeting for which the absence is to be excused. A member's absence from a meeting of the commission may also be excused during the meeting for which the member is absent by the affirmative vote of a majority of the members of the commission present at the meeting.

(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. 2. RCW 43.03.310 and 1986 c 155 s 3 are each amended to read as follows:

(1) The citizens' commission on salaries for elected officials shall study the relationship of salaries to the duties of members of the legislature, all elected officials of the executive branch of state government, and all judges of the supreme court, court of appeals, superior courts, and district courts, and shall fix the salary for each respective position.

(2) Except as provided otherwise in RCW 43.03.305 and this section, the commission shall be solely responsible for its own organization, operation, and action and shall enjoy the fullest cooperation of all state officials, departments, and agencies.

(3) Members of the commission shall receive no compensation for their services, but shall be eligible to receive a subsistence allowance and travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(4) The members of the commission shall elect a ~~((chairperson))~~ chair from among their number. The commission shall set a schedule of salaries by an affirmative vote of not less than ~~((eight))~~ nine members of the commission.

(5) The commission shall file its initial schedule of salaries for the elected officials with the secretary of state no later than the first Monday in June, 1987, and shall file a schedule biennially thereafter. Each such schedule shall be filed in legislative bill form, shall be assigned a chapter number and published with the session laws of the legislature, and shall be codified by the statute law committee. The signature of the ~~((chairperson))~~ chair of the commission shall be affixed to each schedule submitted to the secretary of state. The ~~((chairperson))~~ chair shall certify that the schedule has been adopted in accordance with the provisions of state law and with the rules, if any, of the commission. Such schedules shall become effective ninety days after the filing thereof, except as provided in Article XXVIII, section 1 of the state Constitution. State laws regarding referendum petitions shall apply to such schedules to the extent consistent with Article XXVIII, section 1 of the state Constitution.

(6) Prior to the filing of any salary schedule, the commission shall hold no fewer than four public hearings thereon within the four months immediately preceding the filing.

(7) All meetings, actions, hearings, and business of the commission shall be subject in full to the open public meetings act, chapter 42.30 RCW.

(8) Salaries of the officials referred to in subsection (1) of this section that are in effect on January 12, 1987, shall continue until modified by the commission under 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 House January 27, 1995.

Passed the Senate February 10, 1995.

Approved by the Governor February 10, 1995.

Filed in Office of Secretary of State February 10, 1995.

CHAPTER 4

[Engrossed Senate Bill 5925]

UNEMPLOYMENT INSURANCE COMPENSATION RATES

AN ACT Relating to determining unemployment insurance compensation rates; reenacting and amending RCW 50.29.025 and 50.29.025; creating a new section; 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 50.29.025 and 1993 c 483 s 21 and 1993 c 226 s 13 are each reenacted and 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 except that during rate year 1995 tax schedule AA shall be in effect. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
((3.90)) <u>2.90</u> and above	AA
((3.40 to 3.89)) <u>2.50 to 2.89</u>	A
((2.90 to 3.39)) <u>2.10 to 2.49</u>	B
((2.40 to 2.89)) <u>1.70 to 2.09</u>	C
((1.90 to 2.39)) <u>1.30 to 1.69</u>	D
((1.40 to 1.89)) <u>1.00 to 1.29</u>	E
Less than ((1.40)) <u>1.00</u>	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 (Rate			Schedule of Contribution Rates for Effective Tax Schedule							
From	To	Class	AA	A	B	C	D	E	F	
0.00	5.00	1	0.48	0.36	0.46	0.86	1.36	1.76	2.36	
5.01	10.00	2	0.48	0.36	0.66	1.06	1.56	1.96	2.56	
10.01	15.00	3	0.58	0.46	0.86	1.26	1.66	2.16	2.76	
15.01	20.00	4	0.58	0.66	1.06	1.46	1.86	2.36	2.96	
20.01	25.00	5	0.78	0.86	1.26	1.66	2.06	2.56	3.06	
25.01	30.00	6	0.98	1.06	1.46	1.86	2.26	2.66	3.16	
30.01	35.00	7	1.08	1.26	1.66	2.06	2.46	2.86	3.26	
35.01	40.00	8	1.28	1.46	1.86	2.26	2.66	3.06	3.46	
40.01	45.00	9	1.48	1.66	2.06	2.46	2.86	3.26	3.66	
45.01	50.00	10	1.68	1.86	2.26	2.66	3.06	3.46	3.86	
50.01	55.00	11	1.98	2.16	2.46	2.86	3.26	3.66	3.96	
55.01	60.00	12	2.18	2.36	2.66	3.06	3.46	3.86	4.16	
60.01	65.00	13	2.38	2.56	2.86	3.26	3.66	4.06	4.36	
65.01	70.00	14	2.58	2.76	3.06	3.46	3.86	4.26	4.56	
70.01	75.00	15	2.88	2.96	3.26	3.66	4.06	4.46	4.66	
75.01	80.00	16	3.08	3.16	3.46	3.86	4.26	4.56	4.76	
80.01	85.00	17	3.28	3.36	3.66	4.06	4.46	4.76	4.86	
85.01	90.00	18	3.68	3.76	4.06	4.46	4.76	4.86	5.06	
90.01	95.00	19	4.08	4.16	4.46	4.86	4.96	5.06	5.26	
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40))	

From	To	Rate Class	AA	A	B	C	D	E	F
<u>0.00</u>	<u>5.00</u>	<u>1</u>	<u>0.36</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>0.36</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>0.46</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>0.46</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>0.66</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>0.86</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>0.96</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>1.16</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>1.36</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>1.56</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>1.86</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>2.06</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>2.26</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>2.46</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>2.76</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>2.96</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>3.16</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>3.56</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>3.96</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>	<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 six-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 six-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. 2. RCW 50.29.025 and 1993 c 483 s 21 and 1993 c 226 s 14 are each reenacted and 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
((3.90)) <u>2.90</u> and above	AA
((3.40 to 3.89)) <u>2.50 to 2.89</u>	A
((2.90 to 3.39)) <u>2.10 to 2.49</u>	B
((2.40 to 2.89)) <u>1.70 to 2.09</u>	C
((1.90 to 2.39)) <u>1.30 to 1.69</u>	D
((1.40 to 1.89)) <u>1.00 to 1.29</u>	E
Less than ((1.40)) <u>1.00</u>	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	Class	AA	A	B	C	D	E	F
0.00	5.00	1	0.48	0.48	0.58	0.98	1.48	1.88	2.48
5.01	10.00	2	0.48	0.48	0.78	1.18	1.68	2.08	2.68
10.01	15.00	3	0.58	0.58	0.98	1.38	1.78	2.28	2.88
15.01	20.00	4	0.58	0.78	1.18	1.58	1.98	2.48	3.08
20.01	25.00	5	0.78	0.98	1.38	1.78	2.18	2.68	3.18
25.01	30.00	6	0.98	1.18	1.58	1.98	2.38	2.78	3.28
30.01	35.00	7	1.08	1.38	1.78	2.18	2.58	2.98	3.38
35.01	40.00	8	1.28	1.58	1.98	2.38	2.78	3.18	3.58
40.01	45.00	9	1.48	1.78	2.18	2.58	2.98	3.38	3.78
45.01	50.00	10	1.68	1.98	2.38	2.78	3.18	3.58	3.98

50.01	55.00	11	1.98	2.28	2.58	2.98	3.38	3.78	4.08
55.01	60.00	12	2.18	2.48	2.78	3.18	3.58	3.98	4.28
60.01	65.00	13	2.38	2.68	2.98	3.38	3.78	4.18	4.48
65.01	70.00	14	2.58	2.88	3.18	3.58	3.98	4.38	4.68
70.01	75.00	15	2.88	3.08	3.38	3.78	4.18	4.58	4.78
75.01	80.00	16	3.08	3.28	3.58	3.98	4.38	4.68	4.88
80.01	85.00	17	3.28	3.48	3.78	4.18	4.58	4.88	4.98
85.01	90.00	18	3.68	3.88	4.18	4.58	4.88	4.98	5.18
90.01	95.00	19	4.08	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	5.40

(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 six-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 six-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. 3. (1) The employment security department in consultation with the senate and house of representatives standing committees shall undertake a study of the unemployment insurance trust fund and the financing provisions of the state's unemployment insurance law. The study shall examine:

(a) The historical costs of the state's unemployment program and provide estimates of the expected future costs of the program at average and recession levels;

(b) The ability of the current financing system along with other system models to meet expected average costs for the remainder of this decade and into the next century;

(c) The ability of the system to provide for a trust fund capable of paying benefits during projected future recessions;

(d) The advantages and disadvantages of modifying the existing funding mechanism; and

(e) Any other issues deemed necessary by the commissioner of employment security in consultation with the appropriate chairpersons of the house of representatives and senate standing committees.

(2) The department may contract with a consulting firm in order to perform the study under this section.

(3) The department shall report to the legislature on the findings of its study, including recommendations for changes, if any, in the current financing provisions. The department shall deliver its final report to the legislature by January 1, 1996.

NEW SECTION. **Sec. 4.** (1) Section 1 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.

(2) Section 2 of this act shall take effect January 1, 1998.

NEW SECTION. **Sec. 5.** Section 1 of this act shall expire January 1, 1998.

Passed the Senate March 2, 1995.

Passed the House March 8, 1995.

Approved by the Governor March 16, 1995.

Filed in Office of Secretary of State March 16, 1995.

CHAPTER 5

[Engrossed Substitute Senate Bill 6029]

OVERTIME COMPENSATION

AN ACT Relating to exemptions from overtime compensation requirements; amending RCW 49.46.130; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 49.46.130 and 1993 c 191 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). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(5)(c);

(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, 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.

NEW SECTION. Sec. 2. This act is intended to clarify the original intent of RCW 49.46.010(5)(c). This act applies to all administrative and judicial actions commenced on or after February 1, 1995, and pending on the effective date of this act, and such actions commenced on or after the effective date of this act.

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, 1995.

Passed the House March 24, 1995.

Approved by the Governor March 30, 1995.

Filed in Office of Secretary of State March 30, 1995.

CHAPTER 6

[Substitute House Bill 1001]

INSTITUTIONS OF HIGHER EDUCATION—EXEMPTION FROM
EXPENDITURE REQUIREMENTS

AN ACT Relating to expenditure requirements of institutions of higher education; amending RCW 43.88.150; and declaring an emergency.

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

Sec. 1. RCW 43.88.150 and 1991 c 284 s 3 are each amended to read as follows:

(1) For those agencies that make expenditures from both appropriated and nonappropriated funds for the same purpose, the governor shall direct such agencies to charge their expenditures in such ratio, as between appropriated and nonappropriated funds, as will conserve appropriated funds. This subsection does not apply to institutions of higher education, as defined in RCW 28B.10.016.

(2) Unless otherwise provided by law, if state moneys are appropriated for a capital project and matching funds or other contributions are required as a condition of the receipt of the state moneys, the state moneys shall be disbursed in proportion to and only to the extent that the matching funds or other contributions have been received and are available for expenditure.

(3) The office of financial management shall adopt guidelines for the implementation of this section. The guidelines may account for federal matching requirements or other requirements to spend other moneys in a particular manner.

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 January 27, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 7

[House Bill 1041]

MANUFACTURED HOUSING TRADE ASSOCIATION AUTHORIZED TO
USE MANUFACTURED HOME AS OFFICE

AN ACT Relating to manufactured housing dealers; and amending RCW 46.70.023.

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

Sec. 1. RCW 46.70.023 and 1993 c 307 s 5 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 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. A state-wide trade association representing manufactured housing dealers shall be permitted to use a manufactured home as an office if the office complies with all other applicable building code, zoning, and other land-use regulatory ordinances. 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.

Passed the House February 17, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 8

[Engrossed Substitute House Bill 1125]

FEDERALLY LICENSED DAMS EXEMPTED FROM STATE REGULATION

AN ACT Relating to dam safety inspections; amending RCW 43.21A.064, 86.16.025, and 90.03.350; reenacting and amending RCW 86.16.035; adding a new section to chapter 43.21A RCW; 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:

(1) The federal energy regulatory commission, under the federal power act, licenses hydropower projects in navigable waters and regularly and extensively inspects facilities for safety; and

(2) Nothing in this act alters or affects the department of ecology's authority to: (a) Participate in the federal process of licensing hydropower projects; or (b) ensure that hydropower projects comply with federal statutes such as the coastal zone management act and the clean water act and, subject to section 2 of this act, all applicable state law.

NEW SECTION. Sec. 2. A new section is added to chapter 43.21A RCW to read as follows:

(1) With respect to the safety of any dam, canal, ditch, hydraulic power plant, reservoir, project, or other work, system, or plant that requires a license under the federal power act, no licensee shall be required to:

(a) Submit proposals, plans, specifications, or other documents for approval by the department;

(b) Seek a permit, license, or other form, permission, or authorization from the department;

(c) Submit to inspection by the department; or

(d) Change the design, construction, modification, maintenance, or operation of such facilities at the demand of the department.

(2) For the purposes of this section, "licensee" means an owner or operator, or any employee thereof, of a dam, canal, ditch, hydraulic power plant, reservoir, project, or other work, system, or plant that requires a license under the federal power act.

Sec. 3. RCW 43.21A.064 and 1977 c 75 s 46 are each amended to read as follows:

Subject to section 2 of this act, the director of the department of ecology shall have the following powers and duties:

(1) The supervision of public waters within the state and their appropriation, diversion, and use, and of the various officers connected therewith;

(2) Insofar as may be necessary to assure safety to life or property, he shall inspect the construction of all dams, canals, ditches, irrigation systems, hydraulic power plants, and all other works, systems, and plants pertaining to the use of water, and he may require such necessary changes in the construction or maintenance of said works, to be made from time to time, as will reasonably secure safety to life and property;

(3) He shall regulate and control the diversion of water in accordance with the rights thereto;

(4) He shall determine the discharge of streams and springs and other sources of water supply, and the capacities of lakes and of reservoirs whose waters are being or may be utilized for beneficial purposes;

(5) He shall keep such records as may be necessary for the recording of the financial transactions and statistical data thereof, and shall procure all necessary documents, forms, and blanks. He shall keep a seal of the office, and all certificates by him covering any of his acts or the acts of his office, or the records and files of his office, under such seal, shall be taken as evidence thereof in all courts;

(6) He shall render when required by the governor, a full written report of the work of his office with such recommendations for legislation as he may deem advisable for the better control and development of the water resources of the state;

(7) The director and duly authorized deputies may administer oaths;

(8) He shall establish and promulgate rules governing the administration of chapter 90.03 RCW;

(9) He shall perform such other duties as may be prescribed by law.

Sec. 4. RCW 86.16.025 and 1989 c 64 s 2 are each amended to read as follows:

Subject to section 2 of this act, with respect to such features as may affect flood conditions, the department shall have authority to examine, approve or reject designs and plans for any structure or works, public or private, to be erected or built or to be reconstructed or modified upon the banks or in or over the channel or over and across the floodway of any stream or body of water in this state.

Sec. 5. RCW 86.16.035 and 1987 c 523 s 9 and 1987 c 109 s 53 are each reenacted and amended to read as follows:

Subject to section 2 of this act, the department of ecology shall have supervision and control over all dams and obstructions in streams, and may make reasonable regulations with respect thereto concerning the flow of water which he deems necessary for the protection to life and property below such works from flood waters.

Sec. 6. RCW 90.03.350 and 1994 c 232 s 20 are each amended to read as follows:

Except as provided in section 2 of this act, any person, corporation or association intending to construct or modify any dam or controlling works for the storage of ten acre feet or more of water, shall before beginning said construction or modification, submit plans and specifications of the same to the department for examination and approval as to its safety. Such plans and specifications shall be submitted in duplicate, one copy of which shall be retained as a public record, by the department, and the other returned with its approval or rejection endorsed thereon. No such dam or controlling works shall be constructed or modified until the same or any modification thereof shall have been approved as to its safety by the department. Any such dam or controlling works constructed or modified in any manner other than in accordance with plans and specifications approved by the department or which shall not be maintained in accordance with the order of the department shall be presumed to be a public nuisance and may be abated in the manner provided by law, and it shall be the duty of the attorney general or prosecuting attorney of the county wherein such dam or controlling works, or the major portion thereof, is situated to institute abatement proceedings against the owner or owners of such dam or controlling works, whenever he or she is requested to do so by the department.

A metals mining and milling operation regulated under chapter 232, Laws of 1994 is subject to additional dam safety inspection requirements due to the special hazards associated with failure of a tailings pond impoundment. The department shall inspect these impoundments at least quarterly during the project's operation and at least annually thereafter for the postclosure monitoring period in order to ensure the safety of the dam or controlling works. The department shall conduct additional inspections as needed during the construction phase of the mining operation in order to ensure the safe construction of the tailings impoundment.

Passed the House February 22, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 9

{House Bill 1188}

LOAN-TO-VALUE RATIOS—REAL ESTATE-SECURED LOANS

AN ACT Relating to loan-to-value ratios and examination periods; and amending RCW 31.04.125 and 31.04.145.

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

Sec. 1. RCW 31.04.125 and 1991 c 208 s 13 are each amended to read as follows:

(1) No licensee may make a loan with a repayment period greater than six years and fifteen days after the loan origination date except for open-end loans or loans secured by real estate or personal property used as a residence.

(2) No licensee may make a loan using any method of calculating interest other than the simple interest method; except that the add-on method of calculating interest may be used for a loan not secured by real property or personal property used as a residence when the repayment period does not exceed three years and fifteen days after the loan origination date.

~~(3) ((No licensee may make a loan secured by real estate in an amount in excess of ninety percent of the value of such real estate and improvements, including all prior liens against the property.~~

(4)) No licensee may make a loan using the add-on method to calculate interest that does not provide for a refund to the borrower or a credit to the borrower's account of any unearned interest when the loan is repaid before the original maturity date in full by cash, by a new loan, by refinancing, or otherwise before the final due date. The refund must be calculated using the actuarial method, unless a sum equal to two or more installments has been prepaid and the account is not in arrears and continues to be paid ahead, in which case the interest on the account must be recalculated by the simple interest method with the refund of unearned interest made as if the loan had been made using the simple interest method. When computing an actuarial refund, the lender may round the annual rate used to the nearest quarter of one percent.

In computing a required refund of unearned interest, a prepayment made on or before the fifteenth day after the scheduled payment date is deemed to have been made on the payment date preceding the prepayment. In the case of prepayment before the first installment due date, the company may retain an amount not to exceed one-thirtieth of the first month's interest charge for each day between the origination date of the loan and the actual date of prepayment.

~~((5))~~ (4) No licensee may provide credit life or disability insurance in an amount greater than that required to pay off the total balance owing on the date of the borrower's death net of refunds 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 lender may not require any such insurance.

~~((6))~~ (5) Except in the case of loans by mail, where the borrower has sufficient time to review papers before returning them, no licensee may prepare loan papers in advance of the loan closing without having reviewed with the borrower the terms and conditions of the loan to include the type and amount of insurance, if any, requested by the borrower.

Sec. 2. RCW 31.04.145 and 1994 c 92 s 169 are each amended to read as follows:

For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by a designee, investigate the loans and business and examine, wherever located, the books, accounts, records, and files used in the business of every licensee and of every person who is engaged in the business described in RCW 31.04.035, whether the person acts or claims to act as

principal or agent, or under or without the authority of this chapter. For that purpose the director and designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The director and persons designated by the director may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing. The director shall make such an examination of the affairs, business, office, and records of each licensee (~~at least once each eighteen months~~) as determined by rule. The licensee so examined shall pay to the director the actual cost of examining and supervising each licensed place of business.

Passed the House February 3, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 10

[House Bill 1285]

SURPLUS LINE INSURANCE—IMMUNITY FOR THOSE SUPPLYING INFORMATION ABOUT UNAUTHORIZED SALES OR SELLERS

AN ACT Relating to immunity for providing surplus line insurance information to the insurance commissioner; and amending RCW 48.01.190.

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

Sec. 1. RCW 48.01.190 and 1987 c 51 s 1 are each amended to read as follows:

(1) Any person who files reports, or furnishes other information, required under Title 48 RCW, required by the commissioner under authority granted by Title 48 RCW, useful to the commissioner in the administration of Title 48 RCW, or furnished to the National Association of Insurance Commissioners at the request of the commissioner or pursuant to Title 48 RCW, shall be immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(2) The commissioner and the National Association of Insurance Commissioners, and the agents and employees of each, are immune from liability in any civil action or suit arising from the publication of any report or bulletin or dissemination of information related to the official activities of the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(3) Any licensee under chapter 48.17 RCW and any trade association of the licensees under chapter 48.15 RCW, and any officer, director, employee, agent, or committee of the licensee or association who furnishes information to or for the commissioner or to or for the association regarding unauthorized insurers or

regarding attempts by any person to place or actual placement by any person of business with the insurers, whether in compliance with chapter 48.15 RCW or not, shall be immune from each and every kind of liability in any civil action or suit arising in whole or in part from the information or from the furnishing of the information.

(4) The immunity granted by this section is in addition to any common law or statutory privilege or immunity enjoyed by such person, and nothing in this section is intended to abrogate or modify in any way such common law or statutory privilege or immunity.

Passed the House February 17, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 11

[Substitute House Bill 1453]

RESERVE POLICE OFFICERS—ELIGIBILITY FOR VOLUNTEER FIRE FIGHTERS' RELIEF AND PENSION RETIREMENT BENEFITS

AN ACT Relating to reserve officers' retirement; amending RCW 41.24.010, 41.24.030, 41.24.040, 41.24.170, 41.24.172, 41.24.190, and 41.24.200; reenacting and amending RCW 41.24.240; 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 1993 c 331 s 1 are each amended to read as follows:

As used in this chapter:

"Municipal corporation" or "municipality" includes any county, city ~~((or))~~, town or combination thereof, fire protection district, local law enforcement agency, 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 and reserve officers 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 RCW 41.24.330.

"Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

"Reserve officer" means the same as defined by the Washington state criminal justice training commission under chapter 43.101 RCW.

"Participant" means any fire fighter, emergency worker, or reserve officer who is or may become eligible to receive a benefit of any type under the retirement provisions of this chapter, or whose beneficiary may be eligible to receive any such benefit.

NEW SECTION. Sec. 2. (1) Except as provided in subsection (2) of this section, any municipality may make provision by appropriate legislation and payment of fees required by RCW 41.24.030(1)(d) solely for the purpose of enabling any reserve officer to enroll under the retirement provisions of this chapter.

(2) A reserve officer is not eligible to receive a benefit under the retirement provisions of this chapter for service under chapter 41.26, 41.32, or 41.40 RCW.

(3) Every municipality shall make provisions for the collection and payment of the fees required under this chapter, and shall continue to make provisions for all reserve officers who come under this chapter as long as they continue to be employed as reserve officers.

(4) A reserve officer is not eligible to receive a benefit under the relief and compensation provisions of this chapter.

Sec. 3. RCW 41.24.030 and 1992 c 97 s 1 are each amended to read as follows:

(1) There is created in the state treasury a trust fund for the benefit of the ~~((fire fighters of the state))~~ participants covered by this chapter, which shall be designated the volunteer fire fighters' relief and pension principal fund and shall consist of:

(a) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(b) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording the members of its fire department with protection from death or disability as provided in this chapter as follows:

(i) Ten dollars for each volunteer or part-paid member of its fire department;

(ii) A sum equal to one and one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(c) Where a municipal corporation has elected to make available to the members of its fire department the retirement provisions as provided in this chapter, an annual fee of sixty dollars for each of its fire fighters electing to enroll therein, thirty dollars of which shall be paid by the municipality and thirty dollars of which shall be paid by the fire fighter.

(d) Where a municipal corporation has elected to make the retirement provisions of this chapter available to reserve officers, for each reserve officer that elects to enroll: An annual fee of thirty dollars shall be paid by the reserve officer and an annual fee determined by the state board based on the latest actuarial valuation shall be paid by the municipal corporation. The fee paid by the municipal corporation may include operating expenses.

(e) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund created in subsection (2) of this section.

~~((e))~~ (f) The state investment board, upon request of the state treasurer shall have full power to invest or reinvest such portion of the amounts credited to the principal fund as is not, in the judgment of the treasurer, required to meet current withdrawals. Such investments shall be made in the manner prescribed by RCW 43.84.150 and not otherwise.

~~((f))~~ (g) All bonds or other obligations purchased according to ~~((e))~~ (f) of this subsection shall be forthwith placed in the custody of the state treasurer, and he or she shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

The interest and proceeds from the sale and redemption of any bonds or other obligations held by the fund and invested by the state investment board shall be credited to and form a part of the principal fund, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160.

All amounts credited to the principal fund shall be available for making the benefit payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

(2) The volunteer fire fighters' relief and pension administrative fund is hereby created in the state treasury. Moneys in the account, including

unanticipated revenues under RCW 43.79.270, may be spent only after appropriation, and may be used only for operating expenses of the volunteer fire fighters' relief and pension principal fund, the operating expenses of the volunteer fire fighters' relief and pension administrative fund, or for transfer from the administrative fund to the principal fund.

(a) The state board shall compute a percentage of the amounts credited to the administrative fund to be paid into the principal fund.

(b) For the purpose of providing amounts to be used to defray the cost of administration of the principal and administrative funds, the state board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the administrative fund sufficient to cover estimated expenses for the biennium.

NEW SECTION. Sec. 4. Credit for service as a reserve officer shall not be counted for purposes of RCW 41.24.170 except as stated in this section: Within one year of an election to cover reserve officers under the retirement provisions of this chapter, the municipality must elect, on a one-time basis, one of the following:

(1)(a) To count credit for service only after the effective date of this act;

(b) To pay annual fees only for service after the effective date of this act;

or

(2)(a) To count credit for all service as a reserve officer, but only if the actuarial cost, as determined by the state board, is paid by the municipality. The municipality may charge reserve officers for any portion of the cost; and

(b) To pay annual fees only for service after the effective date of this act;

or

(3)(a) To count credit for all service as a reserve officer, but only if the actuarial cost, as determined by the state board, is paid by the municipality. The municipality may charge reserve officers for any portion of the cost; and

(b) To pay annual fees for service prior to the effective date of this act, if:

(i) The reserve officer elects, within one year of the municipality's election under this section, to pay the annual fee plus one percent per month interest for each year of past service counted; and

(ii) The municipality pays the actuarial cost, as determined by the state board, of the benefit provided in (b) of this subsection. The municipality may charge reserve officers for any portion of the cost.

Payments under this section may be made in a lump sum or in a manner prescribed by the state board.

Sec. 5. RCW 41.24.040 and 1989 c 91 s 10 are each amended to read as follows:

On or before the first day of March of each year, every municipal corporation shall pay such amount as shall be due from it to said fund, together with the amounts collected from the ~~((fire fighters of its fire department))~~ participants: PROVIDED, That no fire fighter shall forfeit his or her right to

participate in the relief and compensation provisions of this chapter by reason of nonpayment: PROVIDED FURTHER, That no ~~((fire-fighter))~~ participant shall forfeit his or her right to participate in the retirement provisions of this chapter until after March 1st of such year: AND PROVIDED FURTHER, That where a municipality has failed to pay or remit the annual fees required within the time provided such delinquent payment shall bear interest at the rate of one percent per month from March 1st until paid: AND PROVIDED FURTHER, That where a ~~((fire-fighter))~~ participant has forfeited his or her right to participate in the retirement provisions of this chapter that ~~((fire-fighter))~~ participant may be reinstated so as to participate to the same extent as if all fees had been paid by the payment of all back fees with interest at the rate of one percent per month provided he or she has at all times been otherwise eligible.

NEW SECTION. Sec. 6. The head of a local law enforcement agency is authorized to enroll its reserve officers and to certify reserve officer service under the retirement provisions of this chapter. The head of that agency shall sign, certify, and send to the state board a voucher for each person entitled to payment from the fund, stating the amount of the payment. The state board, after review and approval shall cause a warrant to be issued on the fund for the amount specified and approved on each voucher. However, after the applicant's eligibility for pension is verified, the state board shall authorize the regular issuance of monthly warrants in payment thereof without further action of the head of the law enforcement agency.

Sec. 7. RCW 41.24.170 and 1992 c 97 s 2 are each amended to read as follows:

Except as provided in section 4 of this act, whenever any ~~((fire-fighter))~~ participant has been a member and served honorably for a period of ten years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and which municipality and ~~((fire-fighter))~~ participant are enrolled under the retirement provisions, and the ~~((fire-fighter))~~ participant has reached the age of sixty-five years, the board of trustees shall order and direct that he or she be retired and be paid a monthly pension as provided in this section.

Whenever a ~~((fire-fighter))~~ participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and he or she has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of twenty-five years, the board of trustees shall order and direct that he or she be retired and such ~~((fire-fighter))~~ participant be paid a monthly pension of two hundred twenty-five dollars from the fund for the balance of that ~~((fire-fighter's))~~ participant's life.

Whenever any ~~((fire-fighter))~~ participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any

capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and the ~~((fire-fighter))~~ participant has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of less than twenty-five years, the board of trustees shall order and direct that he or she be retired and that such ~~((fire-fighter))~~ participant shall receive a minimum monthly pension of twenty-five dollars increased by the sum of eight dollars each month for each year the annual fee has been paid, but not to exceed the maximum monthly pension provided in this section, for the balance of the ~~((fire-fighter's))~~ participant's life.

No pension provided in this section may become payable before the sixty-fifth birthday of the ~~((fire-fighter))~~ participant, nor for any service less than twenty-five years: PROVIDED, HOWEVER, That:

(1) Any ~~((fire-fighter))~~ participant, upon completion of twenty-five years' service and attainment of age sixty, may irrevocably elect, in lieu of the pension to which that ~~((fire-fighter))~~ participant would be entitled under this section at age sixty-five, to receive for the balance of his or her life a monthly pension equal to sixty percent of such pension.

(2) Any ~~((fire-fighter))~~ participant, upon completion of twenty-five years' service and attainment of age sixty-two, may irrevocably elect, in lieu of the pension to which that ~~((fire-fighter))~~ participant would be entitled under this section at age sixty-five, to receive for the balance of his or her life a monthly pension equal to seventy-five percent of such pension.

(3) Any ~~((fire-fighter))~~ participant, upon completion of less than twenty-five years of service shall receive the applicable reduced pension provided in this subsection, according to the age at which that ~~((fire-fighter))~~ participant elects to begin to receive the pension. If receipt of the benefits begins at age sixty-five the ~~((fire-fighter))~~ participant shall receive one hundred percent of the reduced benefit; at age sixty-two the ~~((fire-fighter))~~ participant shall receive seventy-five percent of the reduced benefit; and at age sixty the ~~((fire-fighter))~~ participant shall receive sixty percent of the reduced benefit. The reduced benefit shall be computed as follows:

(a) Upon completion of ten years, but less than fifteen years of service, a monthly pension equal to fifteen percent of such pension as the ~~((fire-fighter))~~ participant would have been entitled to receive at age sixty-five after twenty-five years of service;

(b) Upon completion of fifteen years, but less than twenty years of service, a monthly pension equal to thirty percent of such pension as the ~~((fire-fighter))~~ participant would have been entitled to receive at age sixty-five after twenty-five years of service; and

(c) Upon completion of twenty years, but less than twenty-five years of service, a monthly pension equal to sixty percent of such pension as the ~~((fire-fighter))~~ participant would have been entitled to receive at age sixty-five after twenty-five years of service.

NEW SECTION. Sec. 8. A reserve officer shall not receive a retirement benefit under this chapter unless he or she completes at least three years of service after the effective date of this act.

Sec. 9. RCW 41.24.172 and 1989 c 91 s 6 are each amended to read as follows:

Before beginning to receive the pension provided for in RCW 41.24.170, the ~~((fire-fighter))~~ participant shall elect, in a writing filed with the state board, to have the pension paid under either option 1 or 2, with option 2 calculated so as to be actuarially equivalent to option 1.

(1) Option 1. A ~~((fire-fighter))~~ participant electing this option shall receive a monthly pension payable throughout the ~~((fire-fighter's))~~ participant's life. However, if the ~~((fire-fighter))~~ participant dies before the total pension paid to the ~~((fire-fighter))~~ participant equals the amount paid into the fund, then the balance shall be paid to the ~~((fire-fighter's))~~ participant's surviving spouse, or if there be no surviving spouse, then to the ~~((fire-fighter's))~~ participant's legal representatives.

(2) Option 2. A ~~((fire-fighter))~~ participant electing this option shall receive a reduced monthly pension, which upon the ~~((fire-fighter's))~~ participant's death shall be continued throughout the life of and paid to the ~~((fire-fighter's))~~ participant's surviving spouse named in the written election filed with the state board.

NEW SECTION. Sec. 10. The state board shall direct payment from the fund in the following cases:

(1) To any reserve officer, upon his or her request, upon attaining the age of sixty-five years, who, for any reason, is not qualified to receive the monthly retirement pension under this chapter and who was enrolled in the fund and on whose behalf annual fees for retirement pension were paid, a lump sum amount equal to the amount paid into the fund by the reserve officer.

(2) If any reserve officer who has not completed at least ten years of service dies without having requested a lump sum payment under subsection (1) or (3) of this section, there shall be paid to the reserve officer's surviving spouse, or if there is no surviving spouse, then to such reserve officer's legal representatives, a lump sum amount equal to the amount paid into the fund by the reserve officer. If any reserve officer who has completed at least ten years of service dies without having requested a lump sum payment under subsection (1) or (3) of this section and before beginning to receive the monthly pension provided for in this chapter, the reserve officer's surviving spouse shall elect to receive either:

(a) A monthly pension computed as provided for in RCW 41.24.170 actuarially adjusted to reflect option 2 of RCW 41.24.172 and further actuarially reduced to reflect the difference in the number of years between the reserve officer's age at death and age sixty-five; or

(b) A lump sum amount equal to the amount paid into the fund by the reserve officer and the municipality or municipalities in whose department he or she has served.

If there is no surviving spouse, then there shall be paid to the reserve officer's legal representatives a lump sum amount equal to the amount paid into the fund by the reserve officer.

(3) If any reserve officer retires from service before attaining the age of sixty-five years, the reserve officer may make application for the return in a lump sum of the amount paid into the fund by himself or herself.

Sec. 11. RCW 41.24.190 and 1989 c 91 s 16 are each amended to read as follows:

The filing of reports of enrollment shall be prima facie evidence of the service of the ~~((fire-fighters))~~ participants therein listed for the year of such report as to service rendered subsequent to July 6, 1945. Proof of service of fire fighters prior to that date shall be by documentary evidence, or such other evidence reduced to writing and sworn to under oath, as shall be submitted to the state board and certified by it as sufficient.

Sec. 12. RCW 41.24.200 and 1989 c 91 s 17 are each amended to read as follows:

The aggregate term of service of any ~~((fire-fighter))~~ participant need not be continuous nor need it be confined to a single fire department or law enforcement agency nor a single municipality in this state to entitle such ~~((fire-fighter))~~ participant to a pension: PROVIDED, That the ~~((fire-fighter))~~ participant has been duly enrolled in a fire department or law enforcement agency of a municipality, which has elected to make provisions for the retirement of its ~~((fire-fighters))~~ participants at the time he or she becomes eligible for such pension as in this chapter provided, and has paid all fees prescribed. To be eligible to the full pension a ~~((fire-fighter))~~ participant must have an aggregate of twenty-five years service, have made twenty-five annual payments into the fund, and be sixty-five years of age at the time the ~~((fire-fighter))~~ participant commences drawing the pension provided for by this chapter, all of which twenty-five years service must have been in the fire department or law enforcement agency of a municipality or municipalities which have elected to make provisions for the retirement of its ~~((volunteer fire-fighters))~~ participants: PROVIDED, HOWEVER, That nothing herein contained shall require any ~~((fire-fighter))~~ participant having twenty-five years active service to continue as a fire fighter or reserve officer and no ~~((fire-fighter))~~ participant who has completed twenty-five years of active service for which annual pension fees have been paid and who continues as a fire fighter or reserve officer shall be required to pay any additional annual pension fees.

Sec. 13. RCW 41.24.240 and 1989 c 360 s 26 and 1989 c 91 s 21 are each reenacted and amended to read as follows:

The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

Nothing in this chapter shall be construed to deprive any ~~((fire fighter))~~ participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that ~~((fire fighter))~~ participant may become eligible by reason of services other than or in addition to his or her services ~~((as a fire fighter))~~ under this chapter.

NEW SECTION. Sec. 14. Sections 2, 4, 6, 8, and 10 of this act are each added to chapter 41.24 RCW.

Passed the House March 10, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 12

[House Bill 1498]

POLLUTION LIABILITY INSURANCE AGENCY—EXTENSION

AN ACT Relating to extending the pollution liability insurance agency; amending RCW 70.148.050 and 70.148.900; and declaring an emergency.

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

Sec. 1. RCW 70.148.050 and 1990 c 64 s 6 are each amended to read as follows:

The director has the following powers and duties:

(1) To design and from time to time revise a reinsurance contract providing coverage to an insurer meeting the requirements of this chapter. Before initially entering into a reinsurance contract, the director shall provide a report to the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives financial institutions committees and shall include an actuarial report describing the various reinsurance methods considered by the director and describing each method's costs. In designing the reinsurance contract the director shall consider common insurance industry reinsurance contract provisions and shall design the contract in accordance with the following guidelines:

(a) The contract shall provide coverage to the insurer for the liability risks of owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action that are underwritten by the insurer.

(b) In the event of an insolvency of the insurer, the reinsurance contract shall provide reinsurance payable directly to the insurer or to its liquidator, receiver, or successor on the basis of the liability of the insurer in accordance with the reinsurance contract. In no event may the program be liable for or provide coverage for that portion of any covered loss that is the responsibility of the insurer whether or not the insurer is able to fulfill the responsibility.

(c) The total limit of liability for reinsurance coverage shall not exceed one million dollars per occurrence and two million dollars annual aggregate for each policy underwritten by the insurer less the ultimate net loss retained by the insurer as defined and provided for in the reinsurance contract.

(d) Disputes between the insurer and the insurance program shall be settled through arbitration.

(2) To design and implement a structure of periodic premiums due the director from the insurer that takes full advantage of revenue collections and projected revenue collections to ensure affordable premiums to the insured consistent with sound actuarial principles.

(3) To periodically review premium rates for reinsurance to determine whether revenue appropriations supporting the program can be reduced without substantially increasing the insured's premium costs.

(4) To solicit bids from insurers and select an insurer to provide pollution liability insurance to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action.

(5) To monitor the activities of the insurer to ensure compliance with this chapter and protect the program from excessive loss exposure resulting from claims mismanagement by the insurer.

(6) To monitor the success of the program and periodically make such reports and recommendations to the legislature as the director deems appropriate, and to annually publish a financial report on the pollution liability insurance program trust account showing, among other things, administrative and other expenses paid from the fund.

(7) To annually report the financial and loss experience of the insurer as to policies issued under the program and the financial and loss experience of the program to the legislature.

(8) To evaluate the effects of the program upon the private market for liability insurance for owners and operators of underground storage tanks and make recommendations to the legislature on the necessity for continuing the program to ensure availability of such coverage.

(9) To enter into contracts with public and private agencies to assist the director in his or her duties to design, revise, monitor, and evaluate the program and to provide technical or professional assistance to the director.

(10) To examine the affairs, transactions, accounts, records, documents, and assets of insurers as the director deems advisable.

Sec. 2. RCW 70.148.900 and 1989 c 383 s 13 are each amended to read as follows:

This chapter shall expire June 1, (~~1995~~) 2001.

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 February 22, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 13

[House Bill 1687]

COURT-APPOINTED SPECIAL ADVOCATE PROGRAMS—FUNDING

AN ACT Relating to court-appointed special advocate programs; and adding a new section to chapter 43.330 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.330 RCW to read as follows:

(1) The department of community, trade, and economic development shall distribute such funds as are appropriated for the state-wide technical support, development, and enhancement of court-appointed special advocate programs.

(2) In order to receive money under subsection (1) of this section, an organization providing state-wide technical support, development, and enhancement of court-appointed special advocate programs must meet all of the following requirements:

(a) The organization must provide state-wide support, development, and enhancement of court-appointed special advocate programs that offer guardian ad litem services as provided in RCW 26.12.175, 26.44.053, and 13.34.100;

(b) All guardians ad litem working under court-appointed special advocate programs supported, developed, or enhanced by the organization must be volunteers and may not receive payment for services rendered pursuant to the program. The organization may include paid positions that are exclusively administrative in nature, in keeping with the scope and purpose of this section; and

(c) The organization providing state-wide technical support, development, and enhancement of court-appointed special advocate programs must be a public benefit nonprofit corporation as defined in RCW 24.03.490.

(3) If more than one organization is eligible to receive money under this section, the department shall develop criteria for allocation of appropriated money among the eligible organizations.

Passed the House March 13, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 14

[House Bill 1702]

WHEELCHAIR WARRANTIES

AN ACT Relating to wheelchair warranties; and amending RCW 19.184.010, 19.184.020, and 19.184.030.

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

Sec. 1. RCW 19.184.010 and 1994 c 104 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) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other device assisting mobility.

(2) "Consumer" means any of the following:

(a) The purchaser of a ((motorized)) wheelchair, if the ((motorized)) wheelchair was purchased from a ((motorized)) wheelchair dealer or manufacturer for purposes other than resale;

(b) A person to whom a ((motorized)) wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the ((motorized)) wheelchair;

(c) A person who may enforce a warranty on a ((motorized)) wheelchair; or

(d) A person who leases a ((motorized)) wheelchair from a ((motorized)) wheelchair lessor under a written lease.

(3) "Demonstrator" means a ((motorized)) wheelchair used primarily for the purpose of demonstration to the public.

(4) "Early termination cost" means an expense or obligation that a ((motorized)) wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a ((motorized)) wheelchair to a manufacturer under RCW 19.184.030(2)(b). "Early termination cost" includes a penalty for prepayment under a finance arrangement.

(5) "Early termination savings" means an expense or obligation that a ((motorized)) wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a ((motorized)) wheelchair to a manufacturer under RCW 19.184.030(2)(b).

"Early termination savings" includes an interest charge that the ((motorized)) wheelchair lessor would have paid to finance the ((motorized)) wheelchair or, if the ((motorized)) wheelchair lessor does not finance the ((motorized)) wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(6) "Manufacturer" means a person who manufactures or assembles ((motorized)) wheelchairs and agents of the person, including an importer, a distributor, factory branch, distributor branch, and a warrantor of the manufacturer's ((motorized)) wheelchairs, but does not include a ((motorized)) wheelchair dealer.

~~(7) ("Motorized wheelchair" means a motor-driven wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.~~

~~(8) "Motorized wheelchair dealer" means a person who is in the business of selling motorized wheelchairs.~~

~~(9) "Motorized wheelchair lessor" means a person who leases a motorized wheelchair to a consumer, or who holds the lessor's rights, under a written lease.~~

~~(10))~~ (8) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety of a ((motorized)) wheelchair, and that is covered by an express warranty applicable to the ((motorized)) wheelchair or to a component of the ((motorized)) wheelchair, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the ((motorized)) wheelchair by a consumer.

~~((11))~~ (8) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new ((motorized)) wheelchair or within one year after first delivery of a ((motorized)) wheelchair to a consumer, whichever is sooner:

(a) An attempted repair by the manufacturer, ((motorized)) wheelchair lessor, or the manufacturer's authorized ((motorized)) dealer is made to the same warranty nonconformity at least four times and the nonconformity continues; or

(b) The ((motorized)) wheelchair is out of service for an aggregate of at least thirty days because of warranty nonconformity.

(9) "Wheelchair" means a wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.

(10) "Wheelchair dealer" means a person who is in the business of selling wheelchairs.

(11) "Wheelchair lessor" means a person who leases a wheelchair to a consumer, or who holds the lessor's rights, under a written lease.

Sec. 2. RCW 19.184.020 and 1994 c 104 s 2 are each amended to read as follows:

A manufacturer who sells a ((motorized)) wheelchair to a consumer, either directly or through a ((motorized)) wheelchair dealer, shall furnish the consumer with an express warranty for the ((motorized)) wheelchair. The duration of the

express warranty must be for at least one year after the first delivery of the ((motorized)) wheelchair to the consumer. If the manufacturer fails to furnish an express warranty as required under this section, the ((motorized)) wheelchair is covered by an implied warranty as if the manufacturer had furnished an express warranty to the consumer as required under this section.

Sec. 3. RCW 19.184.030 and 1994 c 104 s 3 are each amended to read as follows:

(1) If a new ((motorized)) wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the ((motorized)) wheelchair lessor, or any of the manufacturer's authorized ((motorized)) wheelchair dealers and makes the ((motorized)) wheelchair available for repair before one year after first delivery of the ((motorized)) wheelchair to the consumer, the nonconformity must be repaired.

(2) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall do one of the following, whichever is appropriate:

(a) At the direction of a consumer described under RCW 19.184.010(2) (a), (b), or (c), do one of the following:

(i) Accept return of the ((motorized)) wheelchair and replace the ((motorized)) wheelchair with a comparable new ((motorized)) wheelchair and refund any collateral costs; or

(ii) Accept return of the ((motorized)) wheelchair and refund to the consumer and to a holder of a perfected security interest in the consumer's ((motorized)) wheelchair, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale, and collateral costs, less a reasonable allowance for use. Under this subsection (2)(a)(ii), a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the ((motorized)) wheelchair by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the ((motorized)) wheelchair was driven before the consumer first reported the nonconformity to the ((motorized)) wheelchair dealer; or

(b)(i) For a consumer described in RCW 19.184.010(2)(d), accept return of the ((motorized)) wheelchair, refund to the ((motorized)) wheelchair lessor and to a holder of a perfected security interest in the ((motorized)) wheelchair, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

(ii) Under this subsection (2)(b), the current value of the written lease equals the total amount for which the lease obligates the consumer during the period of the lease remaining after its early termination, plus the ((motorized)) wheelchair dealer's early termination costs and the value of the ((motorized)) wheelchair at the lease expiration date if the lease sets forth the value, less the ((motorized)) wheelchair lessor's early termination savings.

(iii) Under this subsection (2)(b), a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer drove the ((motorized)) wheelchair before first reporting the nonconformity to the manufacturer, ((motorized)) wheelchair lessor, or ((motorized)) wheelchair dealer.

(3) To receive a comparable new ((motorized)) wheelchair or a refund due under subsection (2)(a) of this section, a consumer described under RCW 19.184.010(2) (a), (b), or (c) shall offer to the manufacturer of the ((motorized)) wheelchair having the nonconformity to transfer possession of the ((motorized)) wheelchair to the manufacturer. Within thirty days after the offer, the manufacturer shall provide the consumer with a comparable new ((motorized)) wheelchair or a refund. When the manufacturer provides a new ((motorized)) wheelchair or refund under this subsection, the consumer shall return to the manufacturer the ((motorized)) wheelchair having the nonconformity.

(4)(a) To receive a refund due under subsection (2)(b) of this section, a consumer described under RCW 19.184.010(2)(d) shall offer to return the ((motorized)) wheelchair having the nonconformity to its manufacturer. Within thirty days after the offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the ((motorized)) wheelchair having the nonconformity.

(b) To receive a refund due under subsection (2)(b) of this section, a ((motorized)) wheelchair lessor shall offer to transfer possession of the ((motorized)) wheelchair having the nonconformity to the manufacturer. Within thirty days after the offer, the manufacturer shall provide a refund to the ((motorized)) wheelchair lessor. When the manufacturer provides the refund, the ((motorized)) wheelchair lessor shall provide to the manufacturer the endorsements necessary to transfer legal possession to the manufacturer.

(c) A person may not enforce the lease against the consumer after the consumer receives a refund due under subsection (2)(b) of this section.

(5) A person may not sell or lease again in this state a ((motorized)) wheelchair returned by a consumer or ((motorized)) wheelchair lessor in this state under subsection (2) of this section or by a consumer or ((motorized)) wheelchair lessor in another state under a similar law of that state, unless full disclosure of the reasons for return is made to a prospective buyer or lessee.

Passed the House March 7, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 15

[House Bill 1706]

DAIRY INSPECTION PROGRAM ASSESSMENT EXTENDED

AN ACT Relating to the dairy inspection program assessment; amending RCW 15.36.551; and declaring an emergency.

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

Sec. 1. RCW 15.36.551 and 1994 c 34 s 1 are each amended to read as follows:

There is levied on all milk processed in this state an assessment not to exceed fifty-four one-hundredths of one cent per hundredweight. The director shall determine, by rule, an assessment, that with contribution from the general fund, will support an inspection program to maintain compliance with the provisions of the pasteurized milk ordinance of the national conference on interstate milk shipment. All assessments shall be levied on the operator of the first milk plant receiving the milk for processing. This shall include milk plants that produce their own milk for processing and milk plants that receive milk from other sources. All moneys collected under this section shall be paid to the director by the twentieth day of the succeeding month for the previous month's assessments. The director shall deposit the funds into the dairy inspection account hereby created within the agricultural local fund established in RCW 43.23.230. The funds shall be used only to provide inspection services to the dairy industry. If the operator of a milk plant fails to remit any assessments, that sum shall be a lien on any property owned by him or her, and shall be reported by the director and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes under chapters 84.60 and 84.64 RCW.

This section shall expire June 30, ~~((1995))~~ 2000.

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, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 16

[Substitute Senate Bill 5022]

MILITARY I.D. CARDS—USE FOR LIQUOR PURCHASES

AN ACT Relating to identification cards for liquor purchases; and amending RCW 66.16.040.

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

Sec. 1. RCW 66.16.040 and 1981 1st ex.s. c 5 s 8 are each amended to read as follows:

Except as otherwise provided by law, an employee in a state liquor store or agency may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Liquor control authority card of identification of any state or province of Canada.

(2) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(3) United States armed forces identification card issued to active duty ((military identification)), reserve, and retired personnel and the personnel's dependents.

(4) Passport.

(5) Merchant Marine identification card issued by the United States Coast Guard.

The board may adopt such regulations as it deems proper covering the acceptance of such cards of identification.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash.

Passed the Senate February 3, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 17

[Senate Bill 5027]

HOMICIDE BY ABUSE—STATUTE OF LIMITATIONS

AN ACT Relating to the statute of limitations for homicide by abuse; and amending RCW 9A.04.080.

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

Sec. 1. RCW 9A.04.080 and 1993 c 214 s 1 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) Homicide by abuse;

(iii) 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, 9A.44.100(1)(b), 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 1, 1995.
Passed the House April 4, 1995.
Approved by the Governor April 12, 1995.
Filed in Office of Secretary of State April 12, 1995.

CHAPTER 18

[Substitute Senate Bill 5279]

SMALL LOAN BUSINESS OF LICENSED CHECK CASHERS AND SELLERS

AN ACT Relating to small loans by licensed check cashers and sellers; amending RCW 31.45.010, 31.45.030, 31.45.040, 31.45.050, 31.45.070, and 42.17.313; and adding new sections to chapter 31.45 RCW.

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

Sec. 1. RCW 31.45.010 and 1994 c 92 s 274 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 director 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) "Small loan" means a loan of up to five hundred dollars for a period of thirty-one days or less.

(5) "Director" means the director of financial institutions.

NEW SECTION. **Sec. 2.** A new section is added to chapter 31.45 RCW to read as follows:

(1) No licensee may engage in the business of making small loans without first obtaining a small loan endorsement to its license from the director in accordance with this chapter. An endorsement will be required for each location where a licensee engages in the business of making small loans, but a small loan endorsement may authorize a licensee to make small loans at a location different than the licensed locations where it cashes or sells checks or drafts. A licensee may have more than one endorsement.

(2) A licensee that has obtained the required small loan endorsement may charge interest or fees for small loans not to exceed in the aggregate fifteen

percent of the principal amount borrowed. The director may determine by rule which fees, if any, are not subject to the fifteen percent limitation.

(3) In connection with making a small loan, a licensee may advance moneys on the security of a postdated check or draft provided the time period between the date the loan is granted and the date of the postdated check does not exceed thirty-one days. A licensee shall deposit all postdated checks or drafts as soon as practicable after the date of the check or draft has passed.

(4) No person may at any time cash or advance any moneys on a postdated check or draft in excess of the amount of goods or services purchased without first obtaining a small loan endorsement to a check casher or check seller license.

NEW SECTION. Sec. 3. A new section is added to chapter 31.45 RCW to read as follows:

(1) Each application for a small loan endorsement to a check casher or check seller license must be in writing and in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, corporation, or association, the name and address of every member, partner, officer, and director thereof;

(b) The street and mailing address of each location where the licensee will engage in the business of making small loans;

(c) A surety bond, or other security allowed under RCW 31.45.030, in the amount required; and

(d) Any other pertinent information, including financial statements, as the director may require with respect to the licensee and its directors, officers, trustees, members, or employees.

(2) Any information in the application regarding the licensee's personal residential address or telephone number is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(3) The application shall be filed together with an investigation and supervision fee established by rule by the director. Fees collected shall be deposited to the credit of the banking examination fund in accordance with RCW 43.320.110.

Sec. 4. RCW 31.45.030 and 1994 c 92 s 276 are each amended to read as follows:

(1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the director in accordance with this chapter. A license is required for each location where a licensee engages in the business of cashing or selling checks or drafts.

(2) Each application for a license shall be in writing in a form prescribed by the director 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 casher or seller;

(d) Such other data, financial statements, and pertinent information as the director 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 director. Such fees collected shall be deposited to the credit of the banking examination fund in accordance with RCW 43.320.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the director shall require that the licensee file with the director 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 director. The director 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.

(b) Before granting a small loan endorsement under this chapter, the director shall require that the licensee file with the director a surety bond, in a format acceptable to the director, issued by a surety insurer that meets the requirements of chapter 48.28 RCW. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. A licensee who wishes to engage in both check selling and making small loans may combine the penal sums of the bonding requirements and file one bond in a form acceptable to the director. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the licensee's violation of this chapter or any rules adopted under this chapter. The bond shall only be liable for damages suffered by borrowers as a result of the licensee's violation of this chapter or rules adopted under this chapter, and shall not be liable for any interest or consequential damages.

(c) The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. 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.

(d) 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, or who obtained a small loan from the licensee and was damaged by the licensee's violation of this chapter or rules adopted under this chapter, 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))~~ (e) In lieu of the surety bond required by this section, the applicant for a check seller license may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond. ~~((The director 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.))~~ In lieu of the surety bond required by this section, the applicant for a small loan endorsement may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond, or may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond.

The director may adopt rules necessary for the proper administration of the security or to establish reporting requirements to ensure that the net worth requirements continue to be met. A deposit given instead of the bond required by this section is not an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. A deposit given instead of the bond

required by this section is a fund held in trust for the benefit of eligible claimants under this section and is not an asset of the estate of any licensee that seeks protection voluntarily or involuntarily under the bankruptcy laws of the United States.

~~((e))~~ (f) Such security may be sold by the director 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 director. 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 director additional security sufficient to meet the amount required by the director. 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.

Sec. 5. RCW 31.45.040 and 1994 c 92 s 277 are each amended to read as follows:

(1) The director shall conduct an investigation of every applicant to determine the financial responsibility, experience, character, and general fitness of the applicant. The director shall issue the applicant a license to engage in the business of cashing or selling checks, or both, or a small loan endorsement, if the director determines to his or her satisfaction that:

(a) The applicant is financially responsible and appears to be able to conduct the business of cashing or selling checks or making small loans in an honest, fair, and efficient manner with the confidence and trust of the community; and

(b) The applicant has the required bonds, or has provided an acceptable alternative form of financial security.

(2) The director may refuse to issue a license or small loan endorsement if he or she finds that the applicant, or any person who is a director, officer, partner, agent, or substantial stockholder of the applicant, has been convicted of a felony in any jurisdiction or is associating or consorting with any person who has been convicted of a felony in any jurisdiction. The term "substantial stockholder" as used in this subsection, means a person owning or controlling ten percent or more of the total outstanding shares of the applicant corporation.

(3) No license or small loan endorsement may be issued to an applicant whose license to conduct business under this chapter had been revoked by the director within the twelve-month period preceding the application.

(4) A license or small loan endorsement issued under this chapter shall be conspicuously posted in the place of business of the licensee. The license is not transferable or assignable.

(5) A license or small loan endorsement issued in accordance with this chapter remains in force and effect ~~((through the remainder of the calendar year~~

~~following its date of issuance))~~ for a period of five years from the date it is issued unless earlier surrendered, suspended, or revoked. However, the initial small loan endorsement is effective until the next expiration date of the underlying license, unless earlier surrendered, suspended, or revoked.

(6) The director's investigation and fees required under this chapter shall differentiate between check cashing and check selling (~~activities~~) and making small loans, and take into consideration the level of risk and potential harm to the public related to each such activity.

Sec. 6. RCW 31.45.050 and 1994 c 92 s 278 are each amended to read as follows:

(1) A license or small loan endorsement may be renewed upon the filing of an application containing such information as the director may require and by the payment of a fee in an amount determined by the director as necessary to cover the costs of supervision. Such fees collected shall be deposited to the credit of the banking examination fund in accordance with RCW 43.320.110. The director shall renew the license in accordance with the standards for issuance of a new license.

(2) If a licensee intends to do business at a new location, to close an existing place of business, or to relocate an existing place of business, the licensee shall provide written notification of that intention to the director no less than thirty days before the proposed establishing, closing, or moving of a place of business.

Sec. 7. RCW 31.45.070 and 1994 c 92 s 280 are each amended to read as follows:

(1) (~~Except for the activities of a pawnbroker as defined in RCW 19.60.010,))~~ No licensee may engage in a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks, or other evidences of debt on the same premises where a check cashing or selling business is conducted, unless ((such loan business is a properly licensed consumer finance company or industrial loan company office or other lending activity permitted in the state of Washington and is physically separated from the check cashing or selling business in a manner approved by the director)) the licensee:

(a) Is conducting the activities of pawnbroker as defined in RCW 19.60.010;

(b) Is a properly licensed consumer loan company;

(c) Is conducting other lending activity permitted in the state of Washington;

or

(d) Has a small loan endorsement.

(2) Except as otherwise permitted in this chapter, no licensee may at any time cash or advance any moneys on a postdated check or draft. However, a licensee may cash a check payable on the first banking day following the date of cashing if:

(a) The check is drawn by the United States, the state of Washington, or any political subdivision of the state, or by any department or agency of the state or its subdivisions; or

(b) The check is a payroll check drawn by an employer to the order of its employee in payment for services performed by the employee.

(3) Except as otherwise permitted in this chapter, no licensee may agree to hold a check or draft for later deposit. A licensee shall deposit all checks and drafts cashed by the licensee as soon as practicable.

(4) No licensee may issue or cause to be issued any check, draft, or money order, or other commercial paper serving the same purpose, that is drawn upon the trust account of a licensee without concurrently receiving the full principal amount, in cash, or by check, draft, or money order from a third party believed to be valid.

(5) No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, any statement or representation that is false, misleading, or deceptive, or that omits material information, or that refers to the supervision of the licensee by the state of Washington or any department or official of the state.

(6) Each licensee shall comply with all applicable federal statutes governing currency transaction reporting.

Sec. 8. RCW 42.17.313 and 1991 c 355 s 22 are each amended to read as follows:

Information in an application for licensing or a small loan endorsement under ((RCW 31.45.030)) chapter 31.45 RCW regarding the personal residential address, telephone number of the applicant, or financial statement is exempt from disclosure under this chapter.

Passed the Senate February 27, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 19

[Senate Bill 5630]

NONCONSENSUAL COMMON LAW LIENS

AN ACT Relating to nonconsensual common law liens; amending RCW 60.70.010 and 60.70.030; and adding new sections to chapter 60.70 RCW.

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

Sec. 1. RCW 60.70.010 and 1986 c 181 s 1 are each amended to read as follows:

(1) It is the intent of this chapter to limit the circumstances in which nonconsensual common law liens shall be recognized in this state.

(2) For the purposes of this chapter:

(a) "Lien" means an encumbrance on property as security for the payment of a debt; ~~((and))~~

(b) "Nonconsensual common law lien" is a lien that:

(i) ~~Is ((recognized now or hereafter under the common law of this state))~~ not provided for by a specific statute;

(ii) Does not depend upon the consent of the owner of the property affected for its existence; and

(iii) Is not a court-imposed equitable or constructive lien;

(c) "State or local official or employee" means an appointed or elected official or any employee of a state agency, board, commission, department in any branch of state government, or institution of higher education; or of a school district, political subdivision, or unit of local government of this state; and

(d) "Federal official or employee" means an employee of the government and federal agency as defined for purposes of the federal tort claims act, 28 U.S.C. Sec. 2671.

(3) Nothing in this chapter is intended to affect:

(a) Any lien provided for by statute;

(b) Any consensual liens now or hereafter recognized under the common law of this state; or

(c) The ability of courts to impose equitable or constructive liens.

NEW SECTION. Sec. 2. A new section is added to chapter 60.70 RCW to read as follows:

(1) Any person whose real or personal property is subject to a recorded claim of common law lien who believes the claim of lien is invalid, may petition the superior court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or his or her attorney setting forth a concise statement of the facts upon which the motion is based. The order shall be served upon the lien claimant by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of lien shall be stricken and released and that the

lien claimant shall be ordered to pay the costs incurred by the petitioner, including reasonable attorneys' fees.

(3) The clerk of the court shall assign a cause number to the petition and obtain from the petitioner a filing fee of thirty-five dollars.

(4) If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order striking and releasing the claim of lien and awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the petitioner.

NEW SECTION. Sec. 3. A new section is added to chapter 60.70 RCW to read as follows:

Any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien.

Sec. 4. RCW 60.70.030 and 1986 c 181 s 3 are each amended to read as follows:

(1) No person has a duty to accept for filing or recording any claim of lien unless the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien, nor does any person have a duty to reject for filing or recording any claim of lien, except as provided in subsection (2) of this section.

(2) No person shall be obligated to accept for filing any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien.

(3) If a claim of lien as described in subsection (2) of this section has been accepted for filing, the recording officer shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee; the assistant attorney general representing the state agency, board, commission, department, or institution of higher education of which the individual is an official or employee; or the attorney representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at his or her last known address. No recording officer or county shall be liable for the acceptance for filing of a claim of lien as described in subsection (2) of this section, nor for the acceptance for filing of a notice of invalid lien pursuant to this subsection.

Passed the Senate March 3, 1995.
 Passed the House April 4, 1995.
 Approved by the Governor April 12, 1995.
 Filed in Office of Secretary of State April 12, 1995.

CHAPTER 20

[Substitute Senate Bill 5660]

HEATING OIL POLLUTION LIABILITY PROTECTION ACT

AN ACT Relating to heating oil pollution liability; amending RCW 82.38.090; adding a new section to chapter 70.148 RCW; adding a new chapter to Title 70 RCW; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** It is the intent of the legislature to establish a temporary regulatory program to assist owners and operators of heating oil tanks. The legislature finds that it is in the best interests of all citizens for heating oil tanks to be operated safely and for tank leaks or spills to be dealt with expeditiously. The legislature further finds that it is necessary to protect tank owners from the financial hardship related to damaged heating oil tanks. The problem is especially acute because owners and operators of heating oil tanks used for space heating have been unable to obtain pollution liability insurance or insurance has been unaffordable.

NEW SECTION. **Sec. 2.** This chapter may be known and cited as the Washington state heating oil pollution liability protection act.

NEW SECTION. **Sec. 3.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accidental release" means a sudden or nonsudden release of heating oil, occurring after the effective date of this act, from operating a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(2) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(3)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Replacement or repair of heating oil tanks or other receptacles; or

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles.

(4) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(5) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(6) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(7) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(8) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from a heating oil tank.

(9) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

(10) "Pollution liability insurance agency" means the Washington state pollution liability insurance agency.

(11) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(12) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(13) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action.

(14) "Tank" means a stationary device, designed to contain an accumulation of heating oil, that is constructed primarily of nonearthen materials such as concrete, steel, fiberglass, or plastic that provides structural support.

(15) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage or personal injury that results from a leak or spill.

NEW SECTION. Sec. 4. The director shall:

(1) Design a program for providing pollution liability insurance for heating oil tanks that provides sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under section 7 of this act;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the pollution liability insurance agency trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks.

NEW SECTION. Sec. 5. (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of heating oil tanks used for space heating, the director shall evaluate bids based upon criteria established by the director that shall include:

(a) The insurer's ability to underwrite pollution liability insurance;

(b) The insurer's ability to settle pollution liability claims quickly and efficiently;

(c) The insurer's estimate of underwriting and claims adjustment expenses;

(d) The insurer's estimate of premium rates for providing coverage;

(e) The insurer's ability to manage and invest premiums; and

(f) The insurer's ability to provide risk management guidance to insureds.

(2) The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(3) Owners and operators of heating oil tanks, or sites containing heating oil tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed.

NEW SECTION. Sec. 6. (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks are exempt from the requirements of Title 48 RCW except for:

(a) Chapter 48.03 RCW pertaining to examinations;

(b) RCW 48.05.250 pertaining to annual reports;

(c) Chapter 48.12 RCW pertaining to assets and liabilities;

(d) Chapter 48.13 RCW pertaining to investments;

(e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and

(f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of heating oil tanks issued in connection with the program.

NEW SECTION. Sec. 7. (1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under section 8 of this act and reinsurance premiums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under this chapter. 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. Any residue in the account shall be transferred at the end of the biennium to the pollution liability insurance agency trust account.

(2) Money in the account may be used by the director for the following purposes:

- (a) Corrective action costs;
- (b) Third-party liability claims;
- (c) Costs associated with claims administration;
- (d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and
- (e) Administrative expenses of the program, including personnel, equipment, and supplies.

NEW SECTION. Sec. 8. (1) A pollution liability insurance fee of six-tenths of one cent per gallon of heating oil purchased within the state shall be imposed on every special fuel dealer, as the term is defined in chapter 82.38 RCW, making sales of heating oil to a user or consumer.

(2) The pollution liability insurance fee shall be remitted by the special fuel dealer to the department of licensing with payment of the special fuel dealer tax.

(3) The fee proceeds shall be used for the specific regulatory purposes of this chapter.

(4) The fee imposed by this section shall not apply to heating oil exported or sold for export from the state.

NEW SECTION. Sec. 9. The following shall be confidential and exempt under chapter 42.17 RCW, subject to the conditions set forth in this section:

(1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) All information obtained by the director or the director's staff related to registration of heating oil tanks to be insured may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(3) The director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

- (a) The Washington state insurance commissioner;
- (b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and
- (c) The attorney general in his or her role as legal advisor to the director.

NEW SECTION. Sec. 10. Nothing contained in this chapter shall authorize any commercial conduct which is prohibited by RCW 19.86.020 through 19.86.060, and no section of this chapter shall be deemed to be an implied repeal of any of those sections of the Revised Code of Washington.

NEW SECTION. Sec. 11. The director shall report by December 31 of each year to the legislature on the status of the regulatory program under this chapter.

NEW SECTION. Sec. 12. A new section is added to chapter 70.148 RCW to read as follows:

The director shall provide reinsurance through the pollution liability insurance program trust account to the heating oil pollution liability protection program under sections 1 through 11 of this act.

Sec. 13. RCW 82.38.090 and 1994 c 262 s 23 are each amended to read as follows:

It shall be unlawful for any person to act as a special fuel dealer or a special fuel user in this state unless such person is the holder of an uncanceled special fuel dealer's or a special fuel user's license issued to him or her by the department.

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 or dealer without collecting the special fuel tax. Special fuel dealers, 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. 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.

NEW SECTION. Sec. 14. Sections 1 through 11 of this act shall expire June 1, 2001.

NEW SECTION. Sec. 15. Sections 1 through 11 of this act shall constitute a new chapter in Title 70 RCW.

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.

Passed the Senate March 13, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 12, 1995.

Filed in Office of Secretary of State April 12, 1995.

CHAPTER 21

[Senate Bill 5042]

MUNICIPAL ORDINANCE POOLING

AN ACT Relating to ordinance information pooling; amending RCW 35A.39.010; and adding a new section to chapter 35.21 RCW.

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

NEW SECTION. Sec. I. A new section is added to chapter 35.21 RCW to read as follows:

(1) It is the purpose of this section to provide a means whereby all cities and towns may obtain, through a single source, information regarding ordinances of other cities and towns that may be of assistance to them in enacting appropriate local legislation.

(2) For the purposes of this section, (a) "clerk" means the city or town clerk or other person who is lawfully designated to perform the recordkeeping function of that office, and (b) "municipal research council" means the municipal research council created by chapter 43.110 RCW.

(3) The clerk of every city and town is directed to provide to the municipal research council or its designee, promptly after adoption, a copy of each of its regulatory ordinances and such other ordinances or kinds of ordinances as may be described in a list or lists promulgated by the municipal research council or its designee from time to time, and may provide such copies without charge. The municipal research council may provide that information to the entity with which it contracts for the provision of municipal research and services, in order to provide a pool of information for all cities and towns in the state of Washington.

(4) This section is intended to be directory and not mandatory.

Sec. 2. RCW 35A.39.010 and 1967 ex.s. c 119 s 35A.39.010 are each amended to read as follows:

Every code city shall keep a journal of minutes of its legislative meetings with orders, resolutions and ordinances passed, and records of the proceedings of any city department, division or commission performing quasi judicial functions as required by ordinances of the city and general laws of the state and shall keep such records open to the public as required by RCW 42.32.030 and shall keep and preserve all public records and publications or reproduce and destroy the same as provided by Title 40 RCW. Each code city (~~shall provide three copies of each of its ordinances of general application to the association of Washington cities without charge and~~) may duplicate and sell copies of its ordinances at fees reasonably calculated to defray the cost of such duplication and handling.

Passed the Senate March 1, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 22

[Senate Bill 5046]

INTERLOCAL AGREEMENTS—FILING REQUIREMENTS

AN ACT Relating to filing requirements for interlocal agreements; amending RCW 39.34.040; and repealing RCW 39.34.120.

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

Sec. 1. RCW 39.34.040 and 1992 c 161 s 5 are each amended to read as follows:

Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor (~~and with the secretary of state~~). In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

NEW SECTION. **Sec. 2.** RCW 39.34.120 and 1967 c 239 s 13 are each repealed.

Passed the Senate February 15, 1995.
Passed the House April 4, 1995.
Approved by the Governor April 13, 1995.
Filed in Office of Secretary of State April 13, 1995.

CHAPTER 23

[Senate Bill 5052]

PRINTING AND DUPLICATION CENTER—REPEAL OF OBSOLETE PROVISIONS

AN ACT Relating to deleting obsolete provisions related to the printing and duplicating center; and repealing RCW 43.19.640, 43.19.645, 43.19.650, 43.19.655, 43.19.660, and 43.19.665.

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 43.19.640 and 1979 c 151 s 105 & 1977 ex.s. c 86 s 1;
- (2) RCW 43.19.645 and 1977 ex.s. c 86 s 2;
- (3) RCW 43.19.650 and 1986 c 158 s 11 & 1977 ex.s. c 86 s 3;
- (4) RCW 43.19.655 and 1977 ex.s. c 86 s 4;
- (5) RCW 43.19.660 and 1987 c 505 s 27, 1986 c 158 s 12, 1979 c 151 s 106, & 1977 ex.s. c 86 s 5;
- (6) RCW 43.19.665 and 1977 ex.s. c 86 s 6.

Passed the Senate March 1, 1995.
Passed the House April 4, 1995.
Approved by the Governor April 13, 1995.
Filed in Office of Secretary of State April 13, 1995.

CHAPTER 24

[Substitute Senate Bill 5067]

STATE LEGAL PUBLICATIONS—DISTRIBUTION, SALE, AND EXCHANGE

AN ACT Relating to distribution and pricing of session laws, legislative journals, and supreme court and court of appeals reports; and amending RCW 40.04.030, 40.04.035, 40.04.040, and 40.04.090.

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

Sec. 1. RCW 40.04.030 and 1971 c 42 s 2 are each amended to read as follows:

The ~~((state law librarian shall receive from the))~~ public printer ~~((, whose duty it))~~ shall ~~((be to))~~ deliver to ~~((him,))~~ the statute law committee all bound volumes of the session laws ~~((, and))~~. The public printer shall deliver the house and senate journals as ((the same)) they are published to the chief clerk of the house of representatives and the secretary of the senate, as appropriate. ~~((He shall also receive from))~~ The publisher of the supreme court reports and the court of appeals reports of the state of Washington ~~((such))~~ shall deliver the copies ((as))

that are purchased by the supreme court for the use of the state to the state law librarian.

Sec. 2. RCW 40.04.035 and 1982 1st ex.s. c 32 s 5 are each amended to read as follows:

The statute law committee, after each legislative session, shall furnish one temporary bound copy of each act as published under chapter 44.20 RCW to each requesting member of the legislature at which such law was enacted, and to each requesting state department or division thereof, commission, committee, board, and council, and to community colleges. ~~((Thirty-five))~~ Copies shall be furnished to the senate and ~~((fifty copies to))~~ the house of representatives ~~((or such other number))~~ as may be requested. Two copies shall be furnished the administrator for the courts. One copy shall be furnished for each assistant attorney general; and one copy each to the Olympia representatives of the Associated Press and the United Press.

Each county auditor shall submit each year to the statute law committee a list of county officials requiring temporary session laws for official use only, and the auditor shall receive and distribute such copies to the county officials.

There shall be a charge ~~((of five dollars))~~ established by the statute law committee for each of the complete sets of such temporary publications when delivered to any person, firm, corporation, or institution excepting the persons and institutions named in this section. All moneys received from the sale of such temporary sets shall be transmitted to the state treasurer, who shall deposit ~~((the same))~~ them in the state treasury to the credit of the general fund.

Sec. 3. RCW 40.04.040 and 1982 1st ex.s. c 32 s 1 are each amended to read as follows:

Permanent session laws shall be distributed, sold, ~~((and/or))~~ and exchanged by the ~~((state law librarian))~~ statute law committee as follows:

(1) Copies shall be given as follows: One to each requesting United States senator and representative in congress from this state; two to the Library of Congress; one to the United States supreme court library; three to the library of the circuit court of appeals of the ninth circuit; two to each United States district court room within this state; two to each office and branch office of the United States district attorneys in this state; one to each requesting state official whose office is created by the Constitution; ~~((two))~~ one each to the ~~((president of the senate;))~~ secretary of the senate ~~((speaker of the house of representatives;))~~ and the chief clerk of the house of representatives and such additional copies as they may request; fourteen copies to the code reviser, two copies to the state library; ~~((two copies to the law library of the University of Puget Sound law school; two copies to the law library of Gonzaga University law school;))~~ two copies each to the law libraries of any accredited law schools ~~((as are hereafter))~~ established in this state; one copy to each state adult correctional institution; and one copy to each state mental institution.

(2) Copies, for official use only, shall be distributed as follows: Two copies to the governor; one each to the state historical society and the state bar association; and one copy to each prosecuting attorney.

Sufficient copies shall be furnished for the use of the supreme court, the court of appeals, the superior courts, and the state law library as from time to time are ~~((needed))~~ requested. ~~((Eight copies shall be distributed to the University of Washington law library; one copy each to the offices of the president and the board of regents of the University of Washington, the dean of the University of Washington school of law, and))~~ One copy to the University of Washington library; one copy to the library of each of the regional universities and to The Evergreen State College; and one copy ~~((to the president of the Washington State University and four copies))~~ to the Washington State University library. Six copies shall be sent to the King county law library, and one copy to each of the county law libraries organized pursuant to law; one copy to each public library in cities of the first class, and one copy to the municipal reference branch of the Seattle public library.

(3) Surplus copies of the session laws shall be sold and delivered by the ~~((state law librarian))~~ statute law committee, in which case the price of the bound volumes shall be ~~((twenty dollars each))~~ sufficient to cover costs. All moneys received from the sale of such bound volumes of session laws shall be paid into the state treasury for the general fund.

(4) The ~~((state law librarian is authorized to))~~ statute law committee may exchange bound copies of the session laws for similar laws or legal materials of other states, territories, and governments, and ~~((to))~~ make such other and further distribution of the bound volumes as in ~~((his))~~ its judgment seems proper.

Sec. 4. RCW 40.04.090 and 1993 c 169 s 1 are each amended to read as follows:

The house and senate journals shall be distributed ~~((and/or))~~ and sold by the ~~((state law librarian))~~ chief clerk of the house of representatives and the secretary of the senate 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))~~ ten copies to the ~~((University of Washington))~~ state 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 each to the law ~~((libraries))~~ library of any accredited law

school (~~as hereafter established~~) in this state; and one to each free public library in the state (~~which~~) that 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 and legislative staff in such numbers as directed by the chief clerk of the house of representatives and secretary of the senate.

(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~~) chief clerk of the house of representatives and the secretary of the senate at a price set by (~~the chief clerk of the house of representatives and the secretary of the senate~~) them 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~~) chief clerk of the house of representatives and the secretary of the senate may exchange copies of the house and senate journals for similar journals of other states, territories, (~~and/or~~) and governments, or for other legal materials, and (~~to~~) make such other and further distribution of them as in (~~his or her~~) their judgment seems proper.

(5) Periodically the (~~state law librarian~~) chief clerk of the house of representatives and the secretary of the senate 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 Senate March 1, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 25

[Senate Bill 5083]

VETERANS AFFAIRS ADVISORY COMMITTEE

AN ACT Relating to the veterans affairs advisory committee; and amending RCW 43.60A.080.

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

Sec. 1. RCW 43.60A.080 and 1992 c 35 s 1 are each amended to read as follows:

(1) There is hereby created a veterans affairs advisory committee which shall serve in an advisory capacity to the governor and the director of the department of veterans affairs. The committee shall be composed of seventeen members to be appointed by the governor, and shall consist of the following:

(a) One representative of the Washington soldiers' home and colony at Orting and one representative of the Washington veterans' home at Retsil. Each home's (~~residents~~) resident council may nominate up to three individuals whose names are to be forwarded by the director to the governor. In making the

appointments, the governor shall consider these recommendations or request additional nominations.

(b) One representative each from the three congressionally chartered or nationally recognized veterans service organizations as listed in the current "Directory of Veterans Service Organizations" published by the United States department of veterans affairs with the largest number of active members in the state of Washington as determined by the director. The organizations' state commanders may each submit a list of three names to be forwarded to the governor by the director. In making the appointments, the governor shall consider these recommendations or request additional nominations.

(c) Ten members shall be chosen to represent those congressionally chartered or nationally recognized veterans service organizations listed in the directory under (b) of this subsection and having at least one active chapter within the state of Washington. Up to three nominations may be forwarded from each organization to the governor by the director. In making the appointments, the governor shall consider these recommendations or request additional nominations.

(d) Two members shall be veterans at large. Any individual or organization may nominate a veteran for an at-large position. Organizational affiliation shall not be a prerequisite for nomination or appointment. All nominations for the at-large positions shall be forwarded by the director to the governor.

(e) No organization shall have more than one official representative on the committee at any one time.

(f) In making appointments to the committee, care shall be taken to ensure that members represent ~~((the))~~ all geographical portions of the state and minority viewpoints, and that the issues and views of concern to women veterans are represented.

(2) All members shall have terms of four years. In the case of a vacancy, appointment shall be only for the remainder of the unexpired term for which the vacancy occurs. No member may serve more than two consecutive terms, with vacancy appointments to an unexpired term not considered as a term. Members appointed before June 11, 1992, shall continue to serve until the expiration of their current terms; and then, subject to the conditions contained in this section, are eligible for reappointment.

(3) The committee shall adopt an order of business for conducting its meetings.

(4) The committee shall have the following powers and duties:

(a) To serve in an advisory capacity to the governor and the director on matters pertaining to the department of veterans affairs;

(b) To acquaint themselves fully with the operations of the department and recommend such changes to the governor and the director as they deem advisable.

(5) Members of the committee shall receive no compensation for the performance of their duties but shall receive a per diem allowance and mileage expense according to the provisions of chapter 43.03 RCW.

Passed the Senate February 13, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 26

[Substitute Senate Bill 5222]

LOG TRUCK LENGTH

AN ACT Relating to log trucks and pole trailers; amending RCW 46.44.030; providing an effective date; and declaring an emergency.

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

Sec. I. RCW 46.44.030 and 1994 c 59 s 2 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 (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 fifty-three 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, or log truck and stinger-steered pole 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. "Stinger-steered," as used in this section, means the coupling device is located behind the tread of the tires of the last axle of the towing vehicle.

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.

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, 1995.

Passed the Senate March 3, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 27

[Senate Bill 5266]

COURT REPORTERS—REVISED LICENSING PROVISIONS

AN ACT Relating to court reporting; amending RCW 18.145.005, 18.145.010, 18.145.020, 18.145.030, 18.145.040, 18.145.050, 18.145.070, 18.145.080, 18.145.090, 18.145.110, 18.145.120, 18.145.130, and 18.145.900; and repealing RCW 18.145.060.

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

Sec. 1. RCW 18.145.005 and 1989 c 382 s 1 are each amended to read as follows:

The legislature finds it necessary to regulate the practice of (~~shorthand reporting or~~) court reporting at the level of certification to protect the public safety and well-being. The legislature intends that only individuals who meet and maintain minimum standards of competence may represent themselves as (~~shorthand or~~) court reporters.

**Sec. 2. RCW 18.145.010 and 1989 c 382 s 2 are each amended to read as follows:*

(1) No person may practice or represent himself or herself as a (~~shorthand reporter or a~~) court reporter without first obtaining a certificate as required by this chapter.

(2) A person represents himself or herself to be a (~~shorthand reporter or~~) court reporter when the person adopts or uses any title or description of services that incorporates one or more of the following terms: "Shorthand reporter," "court reporter," "certified shorthand reporter," (~~or~~) "certified court reporter," or "certified stenomask reporter."

**Sec. 2 was vetoed. See message at end of chapter.*

Sec. 3. RCW 18.145.020 and 1989 c 382 s 3 are each amended to read as follows:

The "practice of ~~((shorthand reporting or))~~ court reporting" means the making by means of written symbols or abbreviations in shorthand or machine writing or oral recording by a stenomask reporter of a verbatim record of any oral court proceeding, deposition, or proceeding before a jury, referee, court commissioner, special master, governmental entity, or administrative agency and the producing of a transcript from the proceeding.

Sec. 4. RCW 18.145.030 and 1989 c 382 s 4 are each amended to read as follows:

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) ~~((Shorthand reporter and))~~ "Court reporter" means an individual certified under this chapter.

~~((4) "Board" means the Washington state shorthand reporter advisory board.))~~

Sec. 5. RCW 18.145.040 and 1989 c 382 s 5 are each amended to read as follows:

Nothing in this chapter prohibits or restricts:

(1) The practice of ~~((a profession))~~ court reporting by individuals who are licensed, certified, or registered as court reporters under other laws of this state and who are performing services within their authorized scope of practice;

(2) The practice of ~~((shorthand))~~ court reporting by an individual employed by the government of the United States while the individual is performing duties prescribed by the laws and regulations of the United States; or

(3) ~~((The practice of court reporting or use of the title certified court reporter by stenomaskers who are practicing as of September 1, 1989.~~

~~Nothing in this chapter shall be construed to prohibit))~~ The introduction of alternate technology in court reporting practice.

Sec. 6. RCW 18.145.050 and 1989 c 382 s 6 are each amended to read as follows:

In addition to any other authority provided by law, the director may:

(1) Adopt rules in accordance with chapter 34.05 RCW that are necessary to implement this chapter;

(2) Set all ~~((certification examination,))~~ renewal, late renewal, duplicate, and verification fees in accordance with RCW 43.24.086;

(3) Establish the forms and procedures necessary to administer this chapter;

(4) Issue a certificate to any applicant who has met the requirements for certification;

(5) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter;

(6) Investigate complaints or reports of unprofessional conduct as defined in this chapter and hold hearings (~~(pursuant to)~~ under chapter 34.05 RCW;

(7) Issue subpoenas for records and attendance of witnesses, statements of charges, statements of intent to deny certificates, and orders; administer oaths; take or cause depositions to be taken; and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(8) Maintain the official departmental record of all applicants and certificate holders;

(9) Delegate, in writing to a designee, the authority to issue subpoenas, statements of charges, and statements of intent to deny certification;

(10) (~~(Prepare and administer or)~~ Approve the preparation and administration of examinations for certification;

(11) Establish by rule the procedures for an appeal of a failure of an examination;

(12) Conduct a hearing under chapter 34.05 RCW on an appeal of a denial of a certificate based on the applicant's failure to meet minimum qualifications for certification;

(13) Set the criteria for meeting the standard required for certification;

(14) Establish advisory committees whose membership shall include representatives of professional court reporting and stenomasking associations and representatives from accredited schools offering degrees in court reporting or stenomasking to advise the director on testing procedures, professional standards, disciplinary activities, or any other matters deemed necessary.

Sec. 7. RCW 18.145.070 and 1989 c 382 s 8 are each amended to read as follows:

The director(~~(, members of the board,)~~) and individuals acting on (~~(their)~~) the director's behalf shall not be civilly liable for any act performed in good faith in the course of their duties.

Sec. 8. RCW 18.145.080 and 1989 c 382 s 9 are each amended to read as follows:

~~((+))~~ The department shall issue a certificate to any applicant who(~~(, as determined by the director upon advice of the board, has:~~

~~(a) Successfully completed an examination approved by the director;~~

~~(b) Good moral character;~~

~~(c) Not engaged in unprofessional conduct; and~~

~~(d) Not been determined to be unable to practice with reasonable skill and safety as a result of a physical or mental impairment.~~

~~(2) A one-year temporary certificate may be issued, at the discretion of the director, to a person holding one of the following: National shorthand reporters association certificate of proficiency, registered professional reporter certificate, or certificate of merit; a current court or shorthand reporter certification, registration, or license of another state; or a certificate of graduation of a court reporting school. To continue to be certified under this chapter, a person~~

~~receiving a temporary certificate shall successfully complete the examination under subsection (1)(a) of this section within one year of receiving the temporary certificate, except that the director may renew the temporary certificate if extraordinary circumstances are shown:~~

~~(3) The examination required by subsection (1)(a) of this section shall be no more difficult than the examination provided by the court reporter examining committee as authorized by RCW 2.32.180)) meets the standards established under this chapter and who:~~

~~(1) Is holding one of the following:~~

~~(a) Certificate of proficiency, registered professional reporter, registered merit reporter, or registered diplomate reporter from national court reporters association;~~

~~(b) Certificate of proficiency or certificate of merit from national stenomask verbatim reporters association; or~~

~~(c) A current Washington state court reporter certification; or~~

~~(2) Has passed an examination approved by the director or an examination that meets or exceeds the standards established by the director.~~

Sec. 9. RCW 18.145.090 and 1989 c 382 s 10 are each amended to read as follows:

Applications for certification shall be submitted on forms provided by the department. The department may require information and documentation to determine whether the applicant meets the ((criteria)) standard for certification as provided in this chapter. Each applicant shall pay a fee determined by the director as provided in RCW 43.24.086 which shall accompany the application.

Sec. 10. RCW 18.145.110 and 1989 c 382 s 12 are each amended to read as follows:

Persons with two or more years' experience in ((shorthand)) stenomask reporting in Washington state as of ((September 1, 1989)) January 1, 1996, shall be granted a ((shorthand reporters)) court reporter certificate without examination, if application is made ((within one year of September 1, 1989. Shorthand reporters with less than two years' experience in shorthand reporting in this state as of September 1, 1989, shall be granted a temporary certificate for one year. To continue to be certified under this chapter, a person receiving a temporary certificate shall successfully complete the examination under RCW 18.145.080 within one year of receiving the temporary certificate, except that the director may renew the temporary certificate if extraordinary circumstances are shown)) before January 1, 1996.

Sec. 11. RCW 18.145.120 and 1989 c 382 s 13 are each amended to read as follows:

(1) Upon receipt of complaints against court reporters, the director shall investigate and evaluate the complaint to determine if disciplinary action is appropriate. The director shall hold disciplinary hearings pursuant to chapter 34.05 RCW.

(2) After a hearing conducted under chapter 34.05 RCW and upon a finding that a certificate 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 director may issue an order providing for one or any combination of the following:

- ~~((1))~~ (a) Revocation of the certification;
- ~~((2))~~ (b) Suspension of the certificate for a fixed or indefinite term;
- ~~((3))~~ (c) Restriction or limitation of the practice;
- ~~((4))~~ (d) Requiring the satisfactory completion of a specific program or remedial education;
- ~~((5))~~ (e) The monitoring of the practice by a supervisor approved by the director;
- ~~((6))~~ (f) Censure or reprimand;
- ~~((7))~~ (g) Compliance with conditions ~~((or))~~ of probation for a designated period of time;
- ~~((8))~~ (h) Denial of the certification request;
- ~~((9))~~ (i) Corrective action;
- ~~((10))~~ (j) Refund of fees billed to or collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. In determining what action is appropriate, the director shall consider sanctions necessary to protect the public, after which the director may consider and include in the order requirements designed to rehabilitate the certificate holder or applicant. All costs associated with compliance to orders issued under this section are the obligation of the certificate holder or applicant.

Sec. 12. RCW 18.145.130 and 1989 c 382 s 14 are each amended to read as follows:

The following conduct, acts, or conditions constitute unprofessional conduct for any certificate 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 ~~((shorthand))~~ court reporting, 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;

(2) Misrepresentation or concealment of a material fact in obtaining or in seeking reinstatement of a certificate;

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

(4) Incompetence or negligence;

(5) Suspension, revocation, or restriction of the individual's certificate, registration, or license to practice ~~((shorthand))~~ court reporting by a regulatory authority in any state, federal, or foreign jurisdiction;

(6) Violation of any state or federal statute or administrative rule regulating the profession;

(7) Failure to cooperate in an inquiry, investigation, or disciplinary action by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation of the matter contained in the complaint filed with the director;

(c) Not responding to subpoenas issued by the director, regardless of whether the recipient of the subpoena is the accused in the proceeding;

(8) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;

(9) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(10) Conviction of any gross misdemeanor or felony relating to the practice of the profession. For the purpose 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.

Sec. 13. RCW 18.145.900 and 1989 c 382 s 15 are each amended to read as follows:

This chapter may be known and cited as the (~~shorthand~~) court reporting practice act.

NEW SECTION. **Sec. 14.** RCW 18.145.060 and 1989 c 382 s 7 are each repealed.

Passed the Senate February 13, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 13, 1995.

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

"I am returning herewith, without my approval as to section 2, Senate Bill No. 5266 entitled:

"AN ACT Relating to court reporting;"

Section 2 of Senate Bill No. 5266 amends RCW 18.145.010 by stipulating that no person may practice court reporting without first obtaining a certificate from the Department of Licensing. This amendment effectively elevates the regulation of this profession from certification to licensure in that it prevents non-certified individuals from performing court reporting functions in any capacity. This change is inconsistent with the intent of RCW 18.145 to regulate the profession at the level of certification. The law will continue to require individuals to meet and maintain minimum standards of competency in order to represent themselves as court reporters.

For the reasons stated above, I have vetoed section 2 of Senate Bill No. 5266.

With the exception of section 2, Senate Bill No. 5266 is approved."

CHAPTER 28

[Senate Bill 5274]

MUNICIPAL RESEARCH COUNCIL—FUNDING

AN ACT Relating to distribution of moneys to the municipal research council; and reenacting RCW 82.44.160.

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

Sec. I. RCW 82.44.160 and 1990 c 104 s 3 and 1990 c 42 s 310 are each reenacted to read as follows:

Before distributing moneys to the cities and towns from the general fund, as provided in RCW 82.44.155, and from the municipal sales and use tax equalization account, as provided in RCW 82.14.210, the state treasurer shall, on the first day of July of each year, make an annual deduction therefrom of a sum equal to one-half of the biennial appropriation made pursuant to this section, which amount shall be at least seven cents per capita of the population of all cities or towns as legally certified on that date, determined as provided in RCW 82.44.150, which sum shall be apportioned and transmitted to the municipal research council, herein created. Sixty-five percent of the annual deduction shall be from the distribution to cities and towns under RCW 82.44.155, and thirty-five percent of the annual deduction shall be from the distribution to the municipal sales and use tax equalization account under RCW 82.14.210. The municipal research council may contract with and allocate moneys to any state agency, educational institution, or private consulting firm, which in its judgment is qualified to carry on a municipal research and service program. Moneys may be utilized to match federal funds available for technical research and service programs to cities and towns. Moneys allocated shall be used for studies and research in municipal government, publications, educational, conferences, and attendance thereat, and in furnishing technical, consultative, and field services to cities and towns in problems relating to planning, public health, municipal sanitation, fire protection, law enforcement, postwar improvements, and public works, and in all matters relating to city and town government. The programs shall be carried on and all expenditures shall be made in cooperation with the cities and towns of the state acting through the Association of Washington Cities by its board of directors which is hereby recognized as their official agency or instrumentality.

Funds appropriated to the municipal research council shall be kept in the treasury in the general fund, and shall be disbursed by warrant or check to contracting parties on invoices or vouchers certified by the chair of the municipal research council or his or her designee. Payments to public agencies may be made in advance of actual work contracted for, in the discretion of the council.

Sixty-five percent of any moneys remaining unexpended or uncontracted for by the municipal research council at the end of any fiscal biennium shall be returned to the general fund and be paid to cities and towns under RCW 82.44.155. The remaining thirty-five percent shall be deposited into the municipal sales and use tax equalization account.

Passed the Senate March 7, 1995.
Passed the House April 4, 1995.
Approved by the Governor April 13, 1995.
Filed in Office of Secretary of State April 13, 1995.

CHAPTER 29

[Senate Bill 5330]

STATE PATROL—RELEASE OF BACKGROUND INFORMATION

AN ACT Relating to the release of background information by the state patrol; and amending RCW 43.43.838.

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

Sec. 1. RCW 43.43.838 and 1992 c 159 s 7 are each amended to read as follows:

(1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or civil adjudication record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

- (a) The subject of the inquiry;
- (b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;
- (c) The department of social and health services;
- (d) Any law enforcement agency, prosecuting authority, or the office of the attorney general; or
- (e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to regulate or license a facility which handles vulnerable adults. However, access to conviction records pursuant to this subsection (1)(e) does not limit or restrict the ability of the department to obtain additional information regarding conviction records and pending charges as set forth in RCW 74.15.030(2)(b).

After processing the request, if the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or adjudication record shows no evidence of a crime against children or other persons or, in the case of vulnerable adults, no evidence of crimes relating to financial exploitation in which the victim was a vulnerable adult, an identification declaring the showing of no evidence shall be issued to the ~~((applicant))~~ business or organization by the state patrol and shall be issued within fourteen working days of the request. The business or organization shall provide a copy of the identification declaring the showing of no evidence to the applicant. Possession of such identification shall

satisfy future record check requirements for the applicant for a two-year period unless the prospective employee is any current school district employee who has applied for a position in another school district.

(2) The state patrol shall by rule establish fees for disseminating records under this section to recipients identified in subsection (1) (a) and (b) of this section. The state patrol shall also by rule establish fees for disseminating records in the custody of the national crime information center. The revenue from the fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records: PROVIDED, That no fee shall be charged to a nonprofit organization for the records check: PROVIDED FURTHER, That in the case of record checks using fingerprints requested by school districts and educational service districts, the state patrol shall charge only for the incremental costs associated with checking fingerprints in addition to name and date of birth. Record checks requested by school districts and educational service districts using only name and date of birth shall continue to be provided free of charge.

(3) No employee of the state, employee of a business or organization, or the business or organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

(4) Before July 26, 1987, the state patrol shall adopt rules and forms to implement this section and to provide for security and privacy of information disseminated under this section, giving first priority to the criminal justice requirements of this chapter. The rules may include requirements for users, audits of users, and other procedures to prevent use of civil adjudication record information or criminal history record information inconsistent with this chapter.

(5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an employer to make an inquiry not specifically authorized by this chapter, or be construed to affect the policy of the state declared in chapter 9.96A RCW.

Passed the Senate March 7, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 30

[Substitute Senate Bill 5370]

LOCAL GOVERNMENT CREDIT CARD USE

AN ACT Relating to the use of credit cards by local governments; amending RCW 42.24.115; adding a new section to chapter 39.58 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) the use of credit cards is a customary and economical business practice to improve cash

management, reduce costs, and increase efficiency; and (2) local governments should consider and use credit cards when appropriate.

NEW SECTION. Sec. 2. A new section is added to chapter 39.58 RCW to read as follows:

(1) Local governments, including counties, cities, towns, special purpose districts, municipal and quasi-municipal corporations, and political subdivisions, are authorized to use credit cards for official government purchases and acquisitions.

(2) A local government may contract for issuance of the credit cards.

(3) The legislative body shall adopt a system for:

(a) The distribution of the credit cards;

(b) The authorization and control of the use of credit card funds;

(c) The credit limits available on the credit cards;

(d) Payment of the bills; and

(e) Any other rule necessary to implement or administer the system under this section.

(4) As used in this section, "credit card" means a card or device issued under an arrangement pursuant to which the issuer gives to a card holder the privilege of obtaining credit from the issuer.

(5) Any credit card system adopted under this section is subject to examination by the state auditor's office pursuant to chapter 43.09 RCW.

(6) Cash advances on credit cards are prohibited.

Sec. 3. RCW 42.24.115 and 1984 c 203 s 5 are each amended to read as follows:

(1) Any municipal corporation or political subdivision may provide for the issuance of charge cards to officers and employees for the ~~((sole))~~ purpose of covering expenses incident to authorized travel.

(2) If a charge card is issued for the purpose of covering expenses relating to authorized travel, upon billing or no later than ~~((ten))~~ thirty days of the billing date, the officer or employee using a charge card issued under this section shall submit a fully itemized travel expense voucher. Any charges against the charge card not properly identified on the travel expense voucher or not allowed following the audit required under RCW 42.24.080 shall be paid by the official or employee by check, United States currency, or salary deduction.

(3) If, for any reason, disallowed charges are not repaid before the charge card billing is due and payable, the municipal corporation or political subdivision shall have a prior lien against and a right to withhold any and all funds payable or to become payable to the official or employee up to an amount of the disallowed charges and interest at the same rate as charged by the company which issued the charge card. Any official or employee who has been issued a charge card by a municipal corporation or political subdivision shall not use the card if any disallowed charges are outstanding and shall surrender the card upon demand of the auditing officer. The municipal corporation or political

subdivision shall have unlimited authority to revoke use of any charge card issued under this section, and, upon such revocation order being delivered to the charge card company, shall not be liable for any costs.

Passed the Senate March 8, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 31

[Senate Bill 5668]

WORKERS' COMPENSATION SELF-INSURERS—SURETIES

AN ACT Relating to sureties for industrial insurance self-insurers; and amending RCW 51.14.020.

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

Sec. 1. RCW 51.14.020 and 1990 c 209 s 1 are each amended to read as follows:

(1) An employer may qualify as a self-insurer by establishing to the director's satisfaction that he or she has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments which may become due from such employer. Each application for certification as a self-insurer submitted by an employer shall be accompanied by payment of a fee of one hundred fifty dollars or such larger sum as the director shall find necessary for the administrative costs of evaluation of the applicant's qualifications. Any employer who has formerly been certified as a self-insurer and thereafter ceases to be so certified may not apply for certification within three years of ceasing to have been so certified.

(2)(a) A self-insurer may be required by the director to supplement existing financial ability by depositing in an escrow account in a depository designated by the director, money and/or corporate or governmental securities approved by the director, or a surety bond written by any company admitted to transact surety business in this state, or provide an irrevocable letter of credit issued by a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington filed with the department. The money, securities, bond, or letter of credit shall be in an amount reasonably sufficient in the director's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, bond, or letter of credit required under this subsection, the director shall take into consideration the financial ability of the employer to pay compensation and assessments and his or her probable continuity of operation. However, a letter of credit shall be acceptable only if the self-insurer has a net worth of not less than five hundred million dollars as evidenced in an annual financial statement prepared by a qualified,

independent auditor using generally accepted accounting principles. The money, securities, bond, or letter of credit so deposited shall be held by the director (~~(to secure))~~ solely for the payment of compensation by the self-insurer and (~~(to secure payment of))~~ his or her assessments. In the event of default the self-insurer loses all right and title to, any interest in, and any right to control the surety. The amount of (~~(security))~~ surety may be increased or decreased from time to time by the director. The income from any securities deposited may be distributed currently to the self-insurer.

(b) The letter of credit option authorized in (a) of this subsection shall not apply to self-insurers authorized under RCW 51.14.150 or to self-insurers who are counties, cities, or municipal corporations.

(3) Securities or money deposited by an employer pursuant to subsection (2) of this section shall be returned to him or her upon his or her written request provided the employer files the bond required by such subsection.

(4) If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the director shall require the employer to make up his or her proper share of any deficit or insufficiency in the state fund as a condition to certification as a self-insurer.

(5) A self-insurer may reinsure a portion of his or her liability under this title with any reinsurer authorized to transact such reinsurance in this state: PROVIDED, That the reinsurer may not participate in the administration of the responsibilities of the self-insurer under this title. Such reinsurance may not exceed eighty percent of the liabilities under this title.

(6) For purposes of the application of this section, the department may adopt separate rules establishing the security requirements applicable to units of local government. In setting such requirements, the department shall take into consideration the ability of the governmental unit to meet its self-insured obligations, such as but not limited to source of funds, permanency, and right of default.

(7) The director shall adopt rules to carry out the purposes of this section including, but not limited to, rules respecting the terms and conditions of letters of credit and the establishment of the appropriate level of net worth of the self-insurer to qualify for use of the letter of credit. Only letters of credit issued in strict compliance with the rules shall be deemed acceptable.

Passed the Senate March 15, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 32

[Substitute Senate Bill 5957]

PLATS AND SUBDIVISIONS—AMENDMENTS

AN ACT Relating to plat and subdivision amendments; amending RCW 58.17.020 and 58.17.110; and adding a new section to chapter 58.17 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 58.17 RCW to read as follows:

The granting of an easement for ingress and egress or utilities over public property that is held as open space pursuant to a subdivision or plat, where the open space is already used as a utility right of way or corridor, where other access is not feasible, and where the granting of the easement will not impair public access or authorize construction of physical barriers of any type, may be authorized and exempted from the requirements of RCW 58.17.215 by the county, city, or town legislative authority following a public hearing with notice to the property owners in the affected plat.

Sec. 2. RCW 58.17.020 and 1983 c 121 s 1 are each amended to read as follows:

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

(2) "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

(3) "Dedication" is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and, the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

A dedication of an area of less than two acres for use as a public park may include a designation of a name for the park, in honor of a deceased individual of good character.

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

(5) "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

(6) "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership: PROVIDED, That the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine.

(7) "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

(8) "Short plat" is the map or representation of a short subdivision.

(9) "Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

(10) "Block" is a group of lots, tracts, or parcels within well defined and fixed boundaries.

(11) "County treasurer" shall be as defined in chapter 36.29 RCW or the office or person assigned such duties under a county charter.

(12) "County auditor" shall be as defined in chapter 36.22 RCW or the office or person assigned such duties under a county charter.

(13) "County road engineer" shall be as defined in chapter 36.40 RCW or the office or person assigned such duties under a county charter.

(14) "Planning commission" means that body as defined in chapters 36.70, 35.63, or 35A.63 RCW as designated by the legislative body to perform a planning function or that body assigned such duties and responsibilities under a city or county charter.

(15) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter.

Sec. 3. RCW 58.17.110 and 1990 1st ex.s. c 17 s 52 are each amended to read as follows:

(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who

only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

(3) If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city, town, or county legislative body must adopt the designated name.

Passed the Senate March 7, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 33

[Substitute Senate Bill 5400]

VICTIMS OF CRIMES—COMPENSATION

AN ACT Relating to compensation for victims of crimes; and amending RCW 7.68.120, 7.68.125, 7.68.130, 9.94A.142, 13.40.190, and 9.95.210.

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

Sec. I. RCW 7.68.120 and 1973 1st ex.s. c 122 s 12 are each amended to read as follows:

Any person who has committed a criminal act which resulted in injury compensated under this chapter may be required to make reimbursement to the department as ~~((hereinafter))~~ provided in this section.

(1) Any payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the department by any person found to have committed ~~((such))~~ the criminal act in either a civil or criminal court proceeding in which he or she is a party~~((--PROVIDED, That where))~~. If there has been a superior or district court order, or an order of the indeterminate sentence review board~~((of prison terms and paroles))~~ or the department of social and health services, as ~~((hereinafter))~~ provided in subsection (4) of this section, the debt shall be limited to the amount provided for in ~~((said))~~ the order. A court order shall prevail over any other order. If, in a criminal proceeding, a person has been found to have committed the criminal act that results in the payment of benefits to a victim and the court in the criminal proceeding does not enter a restitution order, the department shall, within one year of imposition of the sentence, petition the court for entry of a restitution order.

(2)(a) The department may issue a notice of debt due and owing to the person found to have committed the criminal act, and shall serve the notice on the person in the manner prescribed for the service of a summons in a civil action or by certified mail. The department shall file the notice of debt due and owing along with proof of service with the superior court of the county where the criminal act took place. The person served the notice shall have thirty days from the date of service to respond to the notice by requesting a hearing in superior court.

(b) If a person served a notice of debt due and owing fails to respond within thirty days, the department may seek a default judgment. Upon entry of a judgment in an action brought pursuant to (a) of this subsection, the clerk shall enter the order in the execution docket. The filing fee shall be added to the amount of the debt indicated in the judgment. The judgment shall become a lien upon all real and personal property of the person named in the judgment as in other civil cases. The judgment shall be subject to execution, garnishment, or other procedures for collection of a judgment.

(3)(a) The director, or the director's designee, may issue to any person or organization an order to withhold and deliver property of any kind if there is reason to believe that the person or organization possesses property that is due, owing, or belonging to any person against whom a judgment for a debt due and owing has been entered under subsection (2) of this section. For purposes of this subsection, "person or organization" includes any individual, firm, association, corporation, political subdivision of the state, or agency of the state.

(b) The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person or organization upon whom service has been made shall answer the order within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein.

(c) If there is in the possession of the person or organization served with the order any property that might be subject to the claim of the department, the

person or organization must immediately withhold such property and deliver the property to the director or the director's authorized representative immediately upon demand.

(d) If an order to withhold and deliver is served upon an employer and the property found to be subject to the notice is wages, the employer may assert in the answer all exemptions to which the wage earner might be entitled as provided by RCW 6.27.150.

(e) If an order to withhold and deliver is served upon an employer and the property found to be subject to the notice is wages, the employer may assert in the answer all exemptions to which the wage earner might be entitled as provided by RCW 6.27.150.

(4) Upon being placed on work release pursuant to chapter 72.65 RCW, or upon release from custody of a state correctional facility on parole, any convicted person who owes a debt to the department as a consequence of a criminal act may have the schedule or amount of payments therefor set as a condition of work release or parole by the department of social and health services or indeterminate sentence review board ((of prison terms and paroles)) respectively, subject to modification based on change of circumstances. Such action shall be binding on the department.

((3)) (5) Any requirement for payment due and owing the department by a convicted person under this chapter may be waived, modified downward or otherwise adjusted by the department in the interest of justice, the well-being of the victim, and the rehabilitation of the individual.

(6) The department shall not seek payment for a debt due and owing if such action would deprive the victim of the crime giving rise to the claim under this chapter of the benefit of any property to which the victim would be entitled under RCW 26.16.030.

Sec. 2. RCW 7.68.125 and 1975 1st ex.s. c 176 s 8 are each amended to read as follows:

(1) Whenever any payment under this chapter is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter(~~(- PROVIDED, That))~~). The department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed that any claim therefor has been waived(~~(- PROVIDED FURTHER, That))~~). The department may exercise its discretion to waive, in whole or in part, the amount of any such timely claim.

(2) Whenever any payment under this chapter has been made pursuant to an adjudication by the department, board, or any court and timely appeal therefrom has been made and the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under

this chapter(~~(- PROVIDED, That)~~). The department may exercise its discretion to waive, in whole or in part, the amount thereof.

(3) Whenever any payment under this chapter has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient under this chapter and the amount of the penalty shall be placed in the fund or funds established pursuant to RCW 7.68.090 (~~(as now or hereafter amended)~~).

(4) If the department issues an order contending a debt due and owing under this section, the order is subject to chapter 51.52 RCW. If the order becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of an county within the state a warrant in the amount stated in the order plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately enter the warrant in the execution docket. The amount of the warrant as docketed becomes a lien upon all real and personal property of the person against whom the warrant is issued the same as a judgment in a civil case. The warrant shall then be subject to execution, garnishment, and other procedures for the collection of judgments. The filing fee must be added to the amount of the warrant. The department shall mail a conformed copy of the warrant to the person named within seven working days of filing with the clerk.

(5)(a) The director, or the director's designee, may issue to any person or organization an order to withhold and deliver property of any kind if there is reason to believe that the person or organization possesses property that is due, owing, or belonging to any person against whom a final order of debt due and owing has been entered. For purposes of this subsection, "person or organization" includes any individual, firm, association, corporation, political subdivision of the state, or agency of the state.

(b) The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person or organization upon whom service has been made shall answer the order within twenty days exclusive of the day of service under oath and in writing and shall make true answers to the matters inquired of therein.

(c) If there is in the possession of the person or organization served with the order any property that might be subject to the claim of the department, the person or organization must immediately withhold such property and deliver the property to the director or the director's authorized representative immediately upon demand.

(d) If the person or organization served the order fails to timely answer the order, the court may render judgment by default against the person or organization for the full amount claimed by the director in the order plus costs.

(e) If an order to withhold and deliver is served upon an employer and the property found to be subject to the notice is wages, the employer may assert in

the answer all exemptions to which the wage earner might be entitled as provided by RCW 6.27.150.

Sec. 3. RCW 7.68.130 and 1985 c 443 s 16 are each amended to read as follows:

(1) Benefits payable pursuant to this chapter shall be reduced by the amount of any other public or private insurance available, less a proportionate share of reasonable attorneys' fees and costs, if any, incurred by the victim in obtaining recovery from the insurer. Calculation of a proportionate share of attorneys' fees and costs shall be made under the formula established in RCW 51.24.060. The department or the victim may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees.

(2) Benefits payable after 1980 to victims injured or killed before 1980 shall be reduced by any other public or private insurance including but not limited to social security.

(3) Payment by the department under this chapter shall be secondary to ~~((such))~~ other insurance benefits, notwithstanding the provision of any contract or coverage to the contrary ~~((+ PROVIDED, That))~~. In the case of private life insurance proceeds, the first forty thousand dollars of ~~((such))~~ the proceeds shall not be considered for purposes of any ~~((such))~~ reduction in benefits.

(4) For the purposes of this section, the collection methods available under RCW 7.68.125(4) apply.

Sec. 4. RCW 9.94A.142 and 1994 c 271 s 602 are each amended to read as follows:

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days except as provided in subsection (3) of this section. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to

the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if 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) Regardless of the provisions of subsections (1) and (2) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries the court shall hold a restitution hearing and shall enter a restitution order.

(4) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

~~((4))~~ (5) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or defendant.

~~((5))~~ (6) This section shall apply to offenses committed after July 1, 1985.

Sec. 5. RCW 13.40.190 and 1994 sp.s. c 7 s 528 are each amended to read as follows:

(1) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for

loss or damage if 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, pursuant to a plea agreement, are not prosecuted. The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter. The court may determine the amount, terms, and conditions of the restitution including a payment plan extending up to ten years if the court determines that the respondent does not have the means to make full restitution over a shorter period. Restitution may include the costs of counseling reasonably related to the offense. If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday. The court may not require the respondent to pay full or partial restitution if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay such restitution over a ten-year period. In cases where an offender has been committed to the department for a period of confinement exceeding fifteen weeks, restitution may be waived.

(2) Regardless of the provisions of subsection (1) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the disposition order for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(3) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

~~((3))~~ (4) A respondent under obligation to pay restitution may petition the court for modification of the restitution order.

Sec. 6. RCW 9.95.210 and 1993 c 251 s 3 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, (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 RCW 38.52.430, and may require bonds for the faithful observance of any and all conditions imposed in the probation.

The court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries the court shall hold a restitution hearing and shall enter a restitution order.

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.

Passed the Senate March 13, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 34

[Substitute Senate Bill 5419]

HEALTH INSURANCE—COVERAGE OF DEPENDENT CHILDREN

AN ACT Relating to federal financial participation related to health insurer's and children's health care; amending RCW 48.01.180, and 48.41.100, and 26.18.170; adding new sections to chapter 48.01 RCW; and adding a new section to chapter 74.09 RCW.

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

NEW SECTION. Sec. 1. "Issuer" as used in this title and chapter 26.18 RCW means insurer, fraternal benefit society, certified health plan, health maintenance organization, and health care service contractor.

NEW SECTION. Sec. 2. An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not consider the availability of eligibility for medical assistance in this state under medical assistance, RCW 74.09.500, or any other state under 42 U.S.C. Sec. 1396a, section 1902 of the social security act, in considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers, policyholders, or certificate holders.

NEW SECTION. Sec. 3. (1) An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not deny enrollment of a child under the health plan of the child's parent on the grounds that:

- (a) The child was born out of wedlock;
- (b) The child is not claimed as a dependent on the parent's federal tax return; or
- (c) The child does not reside with the parent or in the issuer's, or insured or self funded employee welfare benefit plan's service area.

(2) Where a child has health coverage through an issuer, or an insured or self funded employee welfare benefit plan of a noncustodial parent the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(b) Permit the provider or the custodial parent to submit claims for covered services without the approval of the noncustodial parent. If the provider submits the claim, the provider will obtain the custodial parent's assignment of insurance benefits or otherwise secure the custodial parent's approval.

For purposes of this subsection the department of social and health services as the state medicaid agency under RCW 74.09.500 may reassign medical insurance rights to the provider for custodial parents whose children are eligible for services under RCW 74.09.500; and

(c) Make payments on claims submitted in accordance with (b) of this subsection directly to the custodial parent, to the provider, or to the department of social and health services as the state medicaid agency under RCW 74.09.500.

(3) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(4) Where a parent is required by a court order to provide health coverage for a child, and the parent is eligible for family health coverage, the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(b) Enroll the child under family coverage upon application of the child's other parent, department of social and health services as the state medicaid agency under RCW 74.09.500, or child support enforcement program as defined under RCW 26.18.170, if the parent is enrolled but fails to make application to obtain coverage for such child; and

(c) Not disenroll, or eliminate coverage of, such child who is otherwise eligible for the coverage unless the issuer or insured or self funded employee welfare benefit plan is provided satisfactory written evidence that:

(i) The court order is no longer in effect; or

(ii) The child is or will be enrolled in comparable health coverage through another issuer, or insured or self funded employee welfare benefit plan, which will take effect not later than the effective date of disenrollment.

(5) An issuer, or insured or self funded employee welfare benefit plan, that has been assigned the rights of an individual eligible for medical assistance under medicaid and coverage for health benefits from the issuer, or insured or self funded employee welfare benefit plan, may not impose requirements on the department of social and health services that are different from requirements applicable to an agent or assignee of any other individual so covered.

Sec. 4. RCW 48.01.180 and 1986 c 140 s 1 are each amended to read as follows:

(1) A child of an insured, subscriber, or enrollee shall be considered a dependent child for insurance purposes under this title~~((1) Upon being physically placed with the insured, subscriber, or enrollee for the purposes of adoption under the laws of the state in which the insured, subscriber, or enrollee resides; and (2))~~ upon assumption by the insured, subscriber, or enrollee of ~~((the financial responsibility for the medical expenses))~~ a legal obligation for total or

partial support of a child in anticipation of adoption of the child. Upon the termination of such legal obligations, the child shall not be considered a dependent child for insurance purposes.

~~(Eligibility for coverage of an adopted child is governed by applicable contract, policy, or agreement provisions with respect to dependent children, including any established underwriting guidelines.)~~ (2) Every policy or contract providing coverage for health benefits to a resident of this state shall provide coverage for dependent children placed for adoption under the same terms and conditions as apply to the natural, dependent children of the insured, subscriber, or enrollee whether or not the adoption has become final.

(3) No policy or contract may restrict coverage of any dependent child adopted by, or placed for adoption with, an insured, subscriber, or enrollee solely on the basis of a preexisting condition of the child at the time that the child would otherwise become eligible for coverage under the plan if the adoption or placement for adoption occurs while the insured, subscriber, or enrollee is eligible for coverage under the plan.

Sec. 5. RCW 48.41.100 and 1989 c 121 s 7 are each amended to read as follows:

(1) Any individual person who is a resident of this state is eligible for coverage upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on health insurance, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk, by at least one member within six months of the date of application. Evidence of rejection may be waived in accordance with rules adopted by the board.

(2) The following persons are not eligible for coverage by the pool:

~~(a) ((Any person who is at the time of pool application eligible for medical assistance;~~

~~(b))~~ Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums;

~~((e))~~ (b) Any person on whose behalf the pool has paid out five hundred thousand dollars in benefits;

~~((d))~~ (c) Inmates of public institutions and persons whose benefits are duplicated under public programs.

(3) Any person whose health insurance coverage is involuntarily terminated for any reason other than nonpayment of premium may apply for coverage under the plan.

NEW SECTION. **Sec. 6.** A new section is added to chapter 74.09 RCW to read as follows:

To the extent that payment for covered expenses has been made under medical assistance for health care items or services furnished to an individual,

in any case where a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services. Recovery pursuant to the subrogation rights, assignment, or enforcement of the lien granted to the department by this section shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, except as provided in RCW 43.20B.050 and 43.20B.060. The doctrine of equitable subrogation shall not apply to defeat, reduce, or prorate recovery by the department as to its assignment, lien, or subrogation rights.

Sec. 7. RCW 26.18.170 and 1994 c 230 s 7 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 or proof that such coverage is unavailable 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)~~) issuer 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 or proof that such coverage is unavailable 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 or fails to provide proof that such coverage is unavailable within twenty days of service of the notice, 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)~~) issuer 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~~) issuer, 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.~~) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's 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.

NEW SECTION. Sec. 8. Sections 1 through 3 of this act are each added to chapter 48.01 RCW.

Passed the Senate March 7, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 35

[Senate Bill 5432]

INSURANCE COMPANY RESERVES

AN ACT Relating to unearned premium, loss, and loss expense reserves of insurance companies; and amending RCW 48.12.040, 48.12.090, 48.12.100, 48.12.120, and 48.12.130.

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

Sec. 1. RCW 48.12.040 and 1973 1st ex.s. c 162 s 2 are each amended to read as follows:

(1) With reference to insurances against loss or damage to property, except as provided in RCW 48.12.050, and with reference to all general casualty insurances, and surety insurances, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserve shall be equal to the unearned portions of the gross premiums in force after deducting authorized reinsurance, as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premiums in force, less authorized reinsurance, to be held as a premium reserve, shall be computed according to the following table:

Term for which policy was written		Reserve for unearned premium
One year, or less		1/2
Two years	First year	3/4
	Second year	1/4
Three years	First year	5/6
	Second year	1/2
	Third year	1/6
Four years	First year	7/8
	Second year	5/8
	Third year	3/8
	Fourth year	1/8
Five years	First year	9/10
	Second year	7/10
	Third year	1/2
	Fourth year	3/10
	Fifth year	1/10
Over five years	Pro rata	

(3) In lieu of computation according to such table, all of such reserves may be computed, at the insurer's option, on a monthly pro rata basis.

(4) After adopting any one of the methods for computing such reserve an insurer shall not change methods without the commissioner's approval.

(5) If, for certain policies, the insurer's exposure to loss is uneven over the policy term, the commissioner may grant permission to the insurer to use a different method of calculating the unearned premium reserve on those certain policies.

Sec. 2. RCW 48.12.090 and 1947 c 79 s .12.09 are each amended to read as follows:

The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employer's liability insurance shall be computed as follows:

~~(1) ((For all liability suits being defended under policies written:~~

~~(a) Ten years or more prior to the date of determination, one thousand five hundred dollars for each suit;~~

~~(b) Five or more and less than ten years prior to the date of determination, one thousand dollars for each suit;~~

~~(c) Three or more and less than five years prior to the date of determination, eight hundred fifty dollars for each suit.~~

~~In any event the total loss and loss expense reserves for all such liability policies written more than three years prior to the date of determination shall not be less than the aggregate of the estimated unpaid losses and loss expenses under such policies computed on an individual case basis.~~

~~(2) For all liability policies written during the three years immediately preceding the date of determination, such reserves shall be the sum of the reserves for each such year, which shall be sixty percent of the earned premiums on liability policies written during such year less all loss and loss expense payments made under such policies written in such year. In any event such reserves for each of such three years shall be not less than the aggregate of the estimated unpaid losses and loss expenses for claims incurred under liability policies written in the corresponding year computed on an individual case basis:))~~

The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employer's liability insurance shall be computed in accordance with accepted loss-reserving standards and principles and shall make a reasonable provision for all unpaid loss and loss expense obligations of the insurer under the terms of such policies.

(2) Reserves under liability policies written during the three years immediately preceding the date of determination shall include any additional reserves required by the annual statement instructions of the national association of insurance commissioners.

Sec. 3. RCW 48.12.100 and 1947 c 79 s .12.10 are each amended to read as follows:

~~((1) All unallocated liability loss expense payments shall be distributed as follows:~~

~~(a) If made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies, thirty five percent shall be charged to the policies written that year, forty percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding, ten percent to the policies written in the third year preceding and five percent to the policies written in the fourth year preceding.~~

~~(b) If made in each of the first four calendar years in which an insurer issues liability policies, in the first calendar year one hundred percent shall be charged to the policies written in that year; in the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year; in the third calendar year forty percent shall be charged to the policies written in that year, forty percent to the policies~~

~~written in the preceding year, and twenty percent to the policies written in the second year preceding; and in the fourth calendar year thirty five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, fifteen percent to the policies written in the second year preceding and ten percent to the policies written in the third year preceding.~~

~~(2) A schedule showing such distribution shall be included in the annual statement.)~~

Subject to any restrictions contained in the annual statement instructions or accounting practices and procedures manuals of the national association of insurance commissioners, all unallocated liability loss expense payments shall be distributed as follows:

(1) All payments associated with particular claims shall be distributed to the year in which the claim was covered; and

(2) All other payments shall be distributed by year in a reasonable manner.

Sec. 4. RCW 48.12.120 and 1987 c 185 s 20 are each amended to read as follows:

The loss reserve for workers' compensation insurance shall be as follows:

(1) For all compensation claims under policies of compensation insurance written more than three years prior to the date ~~((as of which the statement is made))~~ of determination, the loss reserve shall be not less than the present values at four percent interest of the determined and the estimated future payments.

(2) For all compensation claims under policies of compensation insurance written in the three years immediately preceding the date ~~((as of which the statement is made))~~ of determination, the loss reserve shall be ~~((sixty five percent of the earned compensation premiums of each of such three years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years; but in any event such reserve shall be))~~ not less than the present value at three and one-half percent interest of the determined and the estimated ~~((unpaid compensation claims under policies written during each of such years))~~ future payments, and shall include any additional reserves required by the annual statement instructions of the national association of insurance commissioners.

Sec. 5. RCW 48.12.130 and 1987 c 185 s 21 are each amended to read as follows:

~~((1) All unallocated workers' compensation loss expense payments shall be distributed as follows:~~

~~(a) If made in a given calendar year subsequent to the first three years in which an insurer has been issuing such compensation policies, forty percent shall be charged to the policies written in that year, forty five percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding and five percent to the policies written in the third year preceding.~~

~~(b) If made in each of the first three calendar years in which an insurer issues compensation policies, in the first calendar year one hundred percent shall~~

~~be charged to the policies written in that year, in the second calendar year fifty percent shall be charged to the policies written in that year, and fifty percent to the policies written in the preceding year; in the third calendar year forty five percent shall be charged to the policies written in that year, forty five percent to the policies written in the preceding year and ten percent to the policies written in the second year preceding.~~

~~(2) A schedule showing such distribution shall be included in the annual statement.))~~

Subject to any restrictions contained in the annual statement instructions or accounting practices and procedures manuals of the national association of insurance commissioners, all unallocated workers' compensation loss expense payments shall be distributed as follows:

(1) All payments associated with particular claims shall be distributed to the year in which the claim was covered; and

(2) All other payments shall be distributed by year in a reasonable manner.

Passed the Senate March 7, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 36

[Substitute Senate Bill 6002]

COMMUNITY AND TECHNICAL COLLEGE TUITION REFUNDS AND FEE CANCELLATIONS

AN ACT Relating to community and technical college tuition refunds or fee cancellations; amending RCW 28B.15.600; adding a new section to chapter 28B.15 RCW; and declaring an emergency.

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

Sec. 1. RCW 28B.15.600 and 1993 sp.s. c 18 s 22 are each amended to read as follows:

The governing boards of the state universities, the regional universities, and The Evergreen State College(~~(, and the community colleges)~~) may refund or cancel in full the tuition and services and activities fees if the student withdraws from a university or college course or program prior to the sixth day of instruction of the quarter or semester for which the fees have been paid or are due. If the student withdraws on or after the sixth day of instruction, the governing boards may refund or cancel up to one-half of the fees, provided such withdrawal occurs within the first thirty calendar days following the beginning of instruction. However, if a different policy is required by federal law in order for the institution of higher education to maintain eligibility for federal funding of programs, the governing board may adopt a refund policy that meets the minimum requirements of the federal law, and the policy may treat all students attending the institution in the same manner.

The governing boards of the respective universities and college((s)) may adopt rules for the refund of tuition and fees for courses or programs that begin after the start of the regular quarter or semester. The governing boards may adopt rules to comply with RCW 28B.15.623 and may extend the refund or cancellation period for students who withdraw for medical reasons or who are called into the military service of the United States and may refund other fees pursuant to such rules as they may prescribe.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.15 RCW to read as follows:

(1) The governing boards of the community colleges and technical colleges shall refund or cancel up to one hundred percent but no less than eighty percent of the tuition and services and activities fees if the student withdraws from a college course or program before the sixth day of instruction of the regular quarter for which the fees have been paid or are due. If the student withdraws on or after the sixth day of instruction, the governing boards shall refund or cancel up to fifty percent but no less than forty percent of the fees provided such withdrawal occurs within the first twenty calendar days following the beginning of instruction. However, if a different policy is required by federal law in order for the college to maintain eligibility for federal funding of programs, the governing board may adopt a refund policy that meets the minimum requirements of the federal law and the policy may treat all students attending the institution in the same manner.

(2) The governing boards of the respective community college or technical college shall adopt rules consistent with subsection (1) of this section for the refund of tuition and fees for the summer quarter and for courses or programs that begin after the start of the regular quarter.

(3) The governing boards of community colleges and technical colleges may adopt rules to comply with RCW 28B.15.623 and may extend the refund or cancellation period for students who withdraw for medical reasons or who are called into the military service of the United States.

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, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

CHAPTER 37

[Substitute Senate Bill 5040]

DISTRICT COURT DISTRICTING COMMITTEES—SELECTION OF MEMBERS

AN ACT Relating to district court districting committee; and reenacting and amending RCW 3.38.010.

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

Sec. I. RCW 3.38.010 and 1994 c 81 s 1 and 1994 c 32 s 2 are each reenacted and amended to read as follows:

There is established in each county a district court districting committee composed of the following:

(1) The judge of the superior court, or, if there be more than one such judge, then one of the judges selected by that court;

(2) The prosecuting attorney, or a deputy selected by the prosecuting attorney;

(3) A practicing lawyer of the county selected by the president of the largest local bar association, if there be one, and if not, then by the county legislative authority;

(4) A judge of a court of limited jurisdiction in the county selected by the president of the Washington state district and municipal court judges' association; and

(5) The mayor, or representative appointed by the mayor, of each city or town with a population of three thousand or more in the county;

(6) One person to represent the cities and towns with populations of three thousand or less in the county, if any, to be ~~((designated by the president of the association of Washington cities: PROVIDED, That))~~ selected by a majority vote of the mayors of those cities and towns with a population of less than three thousand. However, if there should not be a city in the county with a population of ten thousand or more, the mayor, or the mayor's representative, of each city or town with a population of less than three thousand shall be a member;

(7) The chair of the county legislative authority; and

(8) The county auditor.

Passed the Senate March 7, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 38

[Senate Bill 5098]

COUNTY FINANCIAL FUNCTIONS REVISED

AN ACT Relating to county financial functions; reenacting RCW 3.02.045, 35.49.130, 36.17.042, 36.29.010, 39.44.130, 39.46.020, 39.46.030, 39.46.110, 39.50.030, 43.80.125, and 46.44.175; and creating a new section.

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

Sec. 1. RCW 3.02.045 and 1994 c 301 s 1 are each reenacted to read as follows:

(1) Courts of limited jurisdiction may use collection agencies under chapter 19.16 RCW for purposes of collecting unpaid penalties on infractions, criminal fines, costs, assessments, civil judgments, or forfeitures that have been imposed by the courts. Courts of limited jurisdiction may enter into agreements with one or more attorneys or collection agencies for collection of outstanding penalties, fines, costs, assessments, and forfeitures. These agreements may specify the scope of work, remuneration for services, and other charges deemed appropriate.

(2) Courts of limited jurisdiction may use credit cards or debit cards for purposes of billing and collecting unpaid penalties, fines, costs, assessments, and forfeitures so imposed. Courts of limited jurisdiction may enter into agreements with one or more financial institutions for the purpose of the collection of penalties, fines, costs, assessments, and forfeitures. The agreements may specify conditions, remuneration for services, and other charges deemed appropriate.

(3) Servicing of delinquencies by collection agencies or by collecting attorneys in which the court retains control of its delinquencies shall not constitute assignment of debt.

(4) For purposes of this section, the term debt shall include penalties, fines, costs, assessments, or forfeitures imposed by the courts.

(5) The court may assess as court costs the moneys paid for remuneration for services or charges paid to collecting attorneys, to collection agencies, or, in the case of credit cards, to financial institutions.

Sec. 2. RCW 35.49.130 and 1994 c 301 s 4 are each reenacted to read as follows:

If any property situated in a local improvement district or utility local improvement district created by a city or town is offered for sale for general taxes by the county treasurer, the city or town shall have power to protect the lien or liens of any local improvement assessments outstanding against the whole or portion of such property by purchase at the treasurer's foreclosure sale.

Sec. 3. RCW 36.17.042 and 1994 c 301 s 5 are each reenacted to read as follows:

In addition to the pay periods permitted under RCW 36.17.040, the legislative authority of any county may establish a biweekly pay period where county officers and employees receive their compensation not later than seven days following the end of each two week pay period for services rendered during that pay period.

However, in a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW, the county legislative authority may establish a biweekly pay period where the county officers and employees receive their compensation not later than thirteen days following the end of each two-week pay period for services rendered during that pay period.

Sec. 4. RCW 36.29.010 and 1994 c 301 s 7 are each reenacted to read as follows:

The county treasurer:

(1) Shall receive all money due the county and disburse it on warrants issued and attested by the county auditor;

(2) Shall issue a receipt in duplicate for all money received other than taxes; the treasurer shall deliver immediately to the person making the payment the original receipt and the duplicate shall be retained by the treasurer;

(3) Shall affix on the face of all paid warrants the date of redemption or, in the case of proper contract between the treasurer and a qualified public depository, the treasurer may consider the date affixed by the financial institution as the date of redemption;

(4) Shall indorse, before the date of issue by the county or by any taxing district for whom the county treasurer acts as treasurer, on the face of all warrants for which there are not sufficient funds for payment, "interest bearing warrant." When there are funds to redeem outstanding warrants, the county treasurer shall give notice:

(a) By publication in a legal newspaper published or circulated in the county; or

(b) By posting at three public places in the county if there is no such newspaper; or

(c) By notification to the financial institution holding the warrant;

(5) Shall pay interest on all interest-bearing warrants from the date of issue to the date of notification;

(6) Shall maintain financial records reflecting receipts and disbursement by fund in accordance with generally accepted accounting principles;

(7) Shall account for and pay all bonded indebtedness for the county and all special districts for which the county treasurer acts as treasurer;

(8) Shall invest all funds of the county or any special district in the treasurer's custody, not needed for immediate expenditure, in a manner consistent with appropriate statutes. If cash is needed to redeem warrants issued from any fund in the custody of the treasurer, the treasurer shall liquidate investments in an amount sufficient to cover such warrant redemptions; and

(9) May provide certain collection services for county departments.

The treasurer, at the expiration of the term of office, shall make a complete settlement with the county legislative authority, and shall deliver to the successor all public money, books, and papers in the treasurer's possession.

Sec. 5. RCW 39.44.130 and 1994 c 301 s 9 are each reenacted to read as follows:

(1) The duties prescribed in this chapter as to the registration of bonds of any city or town shall be performed by the treasurer thereof, and as to those of any county, port or school district by the county treasurer of the county in which such port or school district lies; but any treasurer as defined in RCW 39.46.020 may designate its legally designated fiscal agency or agencies for the perfor-

mance of such duties, after making arrangements with such fiscal agency therefor, which arrangements may include provision for the payment by the bond owner of a fee for each registration.

(2) The county treasurer as ex officio treasurer of a special district shall act as fiscal agent or may appoint the fiscal agent to be used by the county.

Sec. 6. RCW 39.46.020 and 1994 c 301 s 10 are each reenacted to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Bond" means any agreement which may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of the state or a local government or a fund thereof, where the state or local government agrees to pay a specified amount of money, with or without interest, at a designated time or times to either registered owners or bearers.

(2) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi municipal corporation, including any public corporation created by such an entity.

(3) "Obligation" means an agreement that evidences an indebtedness of the state or a local government, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes.

(4) "State" includes the state, agencies of the state, and public corporations created by the state or agencies of the state.

(5) "Treasurer" means the state treasurer, county treasurer, city treasurer, or treasurer of any other municipal corporation.

Sec. 7. RCW 39.46.030 and 1994 c 301 s 11 are each reenacted to read as follows:

(1) The state and local governments are authorized to establish a system of registering the ownership of their bonds or other obligations as to principal and interest, or principal only. Registration may include, without limitation: (a) A book entry system of recording the ownership of a bond or other obligation whether or not a physical instrument is issued; or (b) recording the ownership of a bond or other obligation together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond or other obligation and either the reissuance of the old bond or other obligation or the issuance of a new bond or other obligation to the new owner.

(2) The system of registration shall define the method or methods by which transfer of the registered bonds or other obligations shall be effective, and by which payment of principal and any interest shall be made. The system of registration may permit the issuance of bonds or other obligations in any denomination to represent several registered bonds or other obligations of smaller denominations. The system of registration may also provide for any writing relating to a bond or other obligation that is not issued as a physical instrument,

for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to the owners of bonds or other obligations, for accounting, canceled certificate destruction, registration and release of securing interests, and for such other incidental matters pertaining to the registration of bonds or other obligations as the issuer may deem to be necessary or appropriate.

(3)(a) The state treasurer or a local treasurer may appoint (i) one or more of the fiscal agencies appointed from time to time by the state finance committee in accordance with chapter 43.80 RCW or (ii) other fiscal agents to act with respect to an issue of its bonds or other obligations as authenticating trustee, transfer agent, registrar, and paying or other agent and specify the rights and duties and means of compensation of any such fiscal agency so acting. The state treasurer or local treasurers may also enter into agreements with the fiscal agency or agencies in connection with the establishment and maintenance by such fiscal agency or agencies of a central depository system for the transfer or pledge of bonds or other obligations.

(b) The county treasurer as ex officio treasurer of a special district shall act as fiscal agent for such special district, unless the county treasurer appoints either one or more of the fiscal agencies appointed from time to time by the state finance committee in accordance with chapter 43.80 RCW or other fiscal agents selected in a manner consistent with RCW 43.80.120 to act with respect to an issue of its bonds or other obligations as authenticating trustee, transfer agent, registrar, and paying or other agent and specify the rights and duties and means of compensation of any such fiscal agency.

(4) Nothing in this section precludes the issuer, or a trustee appointed by the issuer pursuant to any other provision of law, from itself performing, either alone or jointly with other issuers, fiscal agencies, or trustees, any transfer, registration, authentication, payment, or other function described in this section.

Sec. 8. RCW 39.46.110 and 1994 c 301 s 12 are each reenacted to read as follows:

(1) General obligation bonds of local governments shall be subject to this section. Unless otherwise stated in law, the maximum term of any general obligation bond issue shall be forty years.

(2) General obligation bonds constitute an indebtedness of the local government issuing the bonds that are subject to the indebtedness limitations provided in Article VIII, section 6 of the state Constitution and are payable from tax revenues of the local government and such other money lawfully available and pledged or provided by the governing body of the local government for that purpose. Such governing body may pledge the full faith, credit and resources of the local government for the payment of general obligation bonds. The payment of such bonds shall be enforceable in mandamus against the local government and its officials. The officials now or hereafter charged by law with the duty of levying taxes pledged for the payment of general obligation bonds and interest

thereon shall, in the manner provided by law, make an annual levy of such taxes sufficient together with other moneys lawfully available and pledge therefor to meet the payments of principal and interest on said bonds as they come due.

(3) General obligation bonds issued as physical instruments shall be executed in the manner determined by the governing body or legislative body of the issuer. If the issuer is a special district for which the county treasurer is the treasurer, the issuer shall notify the county treasurer at least thirty days in advance of authorizing the issuance of bonds or the incurrence of other certificates of indebtedness.

(4) Unless another statute specifically provides otherwise, the owner of a general obligation bond, or the owner of an interest coupon, issued by a local government shall not have any claim against the state arising from the general obligation bond or interest coupon.

(5) As used in this section, the term "local government" means every unit of local government, including municipal corporations, quasi municipal corporations, and political subdivisions, where property ownership is not a prerequisite to vote in the local government's elections.

Sec. 9. RCW 39.50.030 and 1994 c 301 s 13 are each reenacted to read as follows:

(1) The issuance of short-term obligations shall be authorized by ordinance of the governing body which ordinance shall fix the maximum amount of the obligations to be issued or, if applicable, the maximum amount which may be outstanding at any time, the maximum term and interest rate or rates to be borne thereby, the manner of sale, maximum price, form including bearer or registered as provided in RCW 39.46.030, terms, conditions, and the covenants thereof. The ordinance may provide for designation and employment of a paying agent for the short-term obligations and may authorize a designated representative of the municipal corporation, or if the county, the county treasurer to act on its behalf and subject to the terms of the ordinance in selling and delivering short-term obligations authorized and fixing the dates, price, interest rates, and other details as may be specified in the ordinance. Short-term obligations issued under this section shall bear such fixed or variable rate or rates of interest as the governing body considers to be in the best interests of the municipal corporation. Variable rates of interest may be fixed in relationship to such standard or index as the governing body designates.

The governing body may make contracts for the future sale of short-term obligations pursuant to which the purchasers are committed to purchase the short-term obligations from time to time on the terms and conditions stated in the contract, and may pay such consideration as it considers proper for the commitments. Short-term obligations issued in anticipation of the receipt of taxes shall be paid within six months from the end of the fiscal year in which they are issued. For the purpose of this subsection, short-term obligations issued in anticipation of the sale of general obligation bonds shall not be considered to be obligations issued in anticipation of the receipt of taxes.

(2) Notwithstanding subsection (1) of this section, such short-term obligations may be issued and sold in accordance with chapter 39.46 RCW.

Sec. 10. RCW 43.80.125 and 1994 c 301 s 14 are each reenacted to read as follows:

(1) The fiscal agencies designated pursuant to RCW 43.80.110 and 43.80.120 may be appointed by the state treasurer or a local treasurer to act as registrar, authenticating agent, transfer agent, paying agent, or other agent in connection with the issuance by the state or local government of registered bonds or other obligations pursuant to a system of registration as provided by RCW 39.46.030 and may establish and maintain on behalf of the state or local government a central depository system for the transfer or pledge of bonds or other obligations. The term "local government" shall be as defined in RCW 39.46.020.

(2) Whenever in the judgment of the fiscal agencies, certain services as registrar, authenticating agent, transfer agent, paying agent, or other agent in connection with the establishment and maintenance of a central depository system for the transfer or pledge of registered public obligations, or in connection with the issuance by any public entity of registered public obligations pursuant to a system of registration as provided in chapter 39.46 RCW, can be secured from private sources more economically than by carrying out such duties themselves, they may contract out all or any of such services to such private entities as such fiscal agencies deem capable of carrying out such duties in a responsible manner.

Sec. 11. RCW 46.44.175 and 1994 c 301 s 15 are each reenacted to read as follows:

Failure of any person or agent acting for a person who causes to be moved or moves a mobile home as defined in RCW 46.04.302 upon public highways of this state and failure to comply with any of the provisions of RCW 46.44.170 and 46.44.173 is a traffic infraction for which a penalty of not less than one hundred dollars or more than five hundred dollars shall be assessed. In addition to the above penalty, the department of transportation or local authority may withhold issuance of a special permit or suspend a continuous special permit as provided by RCW 46.44.090 and 46.44.093 for a period of not less than thirty days.

Any person who shall alter, reuse, transfer, or forge the decal required by RCW 46.44.170, or who shall display a decal knowing it to have been forged, reused, transferred, or altered, shall be guilty of a gross misdemeanor.

Any person or agent who is denied a special permit or whose special permit is suspended may upon request receive a hearing before the department of transportation or the local authority having jurisdiction. The department or the local authority after such hearing may revise its previous action.

NEW SECTION. **Sec. 12.** Acts of municipal officers before the effective date of this act that are consistent with its terms, including, but not limited to, acts consistent with chapter 301, Laws of 1994, are ratified and confirmed.

Passed the Senate March 7, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 39

[Substitute Senate Bill 5129]

UTILITY LINE CLEARING—EXCLUSION FROM SALES TAX

AN ACT Relating to excluding utility line clearing from the definition of retail sale; amending RCW 82.04.050; 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. In 1993, the legislature extended retail sales taxes to discretionary spending on landscape maintenance and horticultural services. The legislature did not intend to extend, nor did it believe it was extending, retail sales taxes to pruning, trimming, repairing, removing, and clearing of trees and brush near electric distribution or transmission lines or equipment by, or at the direction of, an electric utility. The latter activities generally require nondiscretionary expenditures by electric utilities in the interests of public safety and minimizing unplanned power interruptions.***

The legislature finds that the department of revenue misinterpreted the intent of the legislature by adopting a rule extending retail sales taxes to pruning, trimming, repairing, removing, and clearing of trees and brush near electric distribution or transmission lines or equipment, performed by, or at the direction of, an electric utility.

It is therefore the intent of section 2 of this act to clarify that these activities are not subject to the sales tax.

****Sec. 1 was vetoed. See message at end of chapter.***

Sec. 2. RCW 82.04.050 and 1993 sp.s. c 25 s 301 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be 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 enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, and others;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events;

(g) Guided tours and guided charters; and

(h) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, massage services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(7) The term shall also not include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture, or to farmers for the purpose of producing for sale any agricultural product, nor shall it include sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority.

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, 1995.

Passed the Senate March 9, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 17, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 17, 1995.

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

"I am returning herewith, without my approval as to section 1, Substitute Senate Bill No. 5129 entitled:

"AN ACT Relating to excluding utility line clearing from the definition of retail sale;"

This measure removes pruning, trimming, repairing, removing, and clearing trees and brush near electric transmission or distribution lines or equipment from the definition of retail sale, thereby exempting such activity from state and local retail sales taxes. By doing so, this activity is changed from the retailing classification to the service classification for purposes of the state's business and occupation tax. The measure is effective on July 1, 1995.

Section 1 of Substitute Senate Bill No. 5129 states that the 1993 Legislature did not intend to extend, nor did it believe it was extending, the sales tax to the trimming and clearing of trees and brush near power lines. The language further asserts that the Department of Revenue misinterpreted legislative intent by adopting a rule extending the sales tax to such services and that it is the intent of section 2 of the bill to clarify that these activities are not subject to the sales tax.

I believe the Department of Revenue had no alternative authority but to include the activity in the sales tax base through its rule. The language in the 1993 legislation pertaining to this question (E2SSB 5967) does not indicate that tree trimming near power lines was to be excluded from the term "landscape maintenance and horticultural services." In addition, there was no expression at the time by the legislature that the department could legally rely upon to exclude such activity from the sales tax base. It should be noted that when the sales tax was applied to these services by this previous legislature, horticultural services "provided to farmers" were excluded from application of the tax. No comparable explicit exclusion was provided for utility line clearing services.

As a result, section 2 of Substitute Senate Bill No. 5129 serves as a substantive change in law with application from July 1, 1995 forward. The presence of section 1, however, creates ambiguity and may encourage those who have paid sales tax on tree trimming near utility lines since the 1993 law change to believe they are entitled to refunds. Administering such claims and potentially litigating this issue would lead to an unnecessary expenditure of state funds and resources.

For these reasons, I have vetoed section 1 of Substitute Senate Bill No. 5129.

With the exception of section 1, Substitute Senate Bill No. 5129 is approved."

CHAPTER 40

[Substitute Senate Bill 5234]

JUVENILE OFFENDER BASIC TRAINING CAMP ELIGIBILITY

AN ACT Relating to eligibility for juvenile offender basic training camp; and amending RCW 13.40.320.

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

Sec. 1. RCW 13.40.320 and 1994 sp.s. c 7 s 532 are each amended to read as follows:

(1) The department of social and health services shall establish and operate a medium security juvenile offender basic training camp program. The department shall site a juvenile offender basic training camp facility in the most cost-effective facility possible and shall review the possibility of using an existing abandoned and/or available state, federally, or military-owned site or facility.

(2) The department may contract under this chapter with private companies, the national guard, or other federal, state, or local agencies to operate the juvenile offender basic training camp, notwithstanding the provisions of RCW 41.06.380. Requests for proposals from possible contractors shall not call for payment on a per diem basis.

(3) The juvenile offender basic training camp shall accommodate at least seventy offenders. The beds shall count as additions to, and not be used as replacements for, existing bed capacity at existing department of social and health services juvenile facilities.

(4) The juvenile offender basic training camp shall be a structured and regimented model lasting one hundred twenty days emphasizing the building up of an offender's self-esteem, confidence, and discipline. The juvenile offender basic training camp program shall provide participants with basic education, prevocational training, work-based learning, live work, work ethic skills, conflict resolution counseling, substance abuse intervention, anger management counseling, and structured intensive physical training. The juvenile offender basic training camp program shall have a curriculum training and work schedule that incorporates a balanced assignment of these or other rehabilitation and training components for no less than sixteen hours per day, six days a week.

The department shall adopt rules for the safe and effective operation of the juvenile offender basic training camp program, standards for an offender's successful program completion, and rules for the continued after-care supervision of offenders who have successfully completed the program.

(5) Offenders eligible for the juvenile offender basic training camp option shall be those with a disposition of ~~((at least fifty-two weeks but))~~ not more than seventy-eight weeks. Violent and sex offenders shall not be eligible for the juvenile offender basic training camp program.

(6) If the court determines that the offender is eligible for the juvenile offender basic training camp option, the court may recommend that the department place the offender in the program. The department shall evaluate the offender and may place the offender in the program. The evaluation shall include, at a minimum, a risk assessment developed by the department and designed to determine the offender's suitability for the program. No juvenile who is assessed as a high risk offender or suffers from any mental or physical problems that could endanger his or her health or drastically affect his or her performance in the program shall be admitted to or retained in the juvenile offender basic training camp program.

(7) All juvenile offenders eligible for the juvenile offender basic training camp sentencing option shall spend ~~((the first))~~ one hundred twenty days of their disposition in a juvenile offender basic training camp. If the juvenile offender's activities while in the juvenile offender basic training camp are so disruptive to the juvenile offender basic training camp program, as determined by the secretary according to rules adopted by the department, as to result in the removal of the juvenile offender from the juvenile offender basic training camp program, or if

the offender cannot complete the juvenile offender basic training camp program due to medical problems, the secretary shall require that the offender be committed to a juvenile institution to serve the entire remainder of his or her disposition, less the amount of time already served in the juvenile offender basic training camp program.

(8) All offenders who successfully graduate from the one hundred twenty day juvenile offender basic training camp program shall spend the remainder of their disposition on parole in a division of juvenile rehabilitation intensive aftercare program in the local community. The program shall provide for the needs of the offender based on his or her progress in the aftercare program as indicated by ongoing assessment of those needs and progress. The intensive aftercare program shall monitor postprogram juvenile offenders and assist them to successfully reintegrate into the community. In addition, the program shall develop a process for closely monitoring and assessing public safety risks. The intensive aftercare program shall be designed and funded by the department of social and health services.

(9) The department shall also develop and maintain a data base to measure recidivism rates specific to this incarceration program. The data base shall maintain data on all juvenile offenders who complete the juvenile offender basic training camp program for a period of two years after they have completed the program. The data base shall also maintain data on the criminal activity, educational progress, and employment activities of all juvenile offenders who participated in the program. The department shall produce an outcome evaluation report on the progress of the juvenile offender basic training camp program to the appropriate committees of the legislature no later than December 12, 1996.

Passed the Senate March 13, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 41

[Engrossed Senate Bill 5243]

MINIATURE HOBBY BOILER PERMITS

AN ACT Relating to special permits for miniature boilers; and amending RCW 70.79.070.

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

Sec. 1. RCW 70.79.070 and 1993 c 193 s 1 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 hobby boilers ~~((manufactured before January 1, 1995, which))~~ that do not comply with the code requirements of the American society of mechanical engineers adopted under this chapter ~~(, which))~~ and 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 or industrial use and the department of labor and industries finds, upon inspection, that operation of the boiler for such purposes is not unsafe.

Passed the Senate February 15, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 42

[Senate Bill 5251]

TRANSPORTATION AUTHORITY OF FIRST CLASS CITIES

AN ACT Relating to the transportation authority of first class cities; and amending RCW 35.92.060.

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

Sec. 1. RCW 35.92.060 and 1991 c 124 s 1 are each amended to read as follows:

A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain, operate, or lease cable, electric, and other railways, automobiles, motor cars, motor buses, auto trucks, and any and all other forms or methods of transportation of freight or passengers within the corporate limits of the city or town, and a first class city may also construct, purchase, acquire, add to, alter, maintain, operate, or lease cable, electric, and other railways beyond those corporate limits only within the boundaries of the county in which the city is located and of any adjoining county ~~((that has a population of at least forty thousand and fewer than one hundred twenty five thousand and that is intersected by an interstate highway))~~, for the transportation

of freight and passengers above, upon, or underneath the ground. It may also fix, alter, regulate, and control the fares and rates to be charged therefor; and fares or rates may be adjusted or eliminated for any distinguishable class of users including, but not limited to, senior citizens, handicapped persons, and students. Without the payment of any license fee or tax, or the filing of a bond with, or the securing of a permit from, the state, or any department thereof, the city or town may engage in, carry on, and operate the business of transporting and carrying passengers or freight for hire by any method or combination of methods that the legislative authority of any city or town may by ordinance provide, with full authority to regulate and control the use and operation of vehicles or other agencies of transportation used for such business.

Passed the Senate March 8, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 43

[Engrossed Substitute Senate Bill 5253]

PUBLIC HEALTH IMPROVEMENT PLAN IMPLEMENTATION

AN ACT Relating to implementation of the public health improvement plan; amending RCW 41.05.240, 70.05.030, 70.05.035, 70.05.050, 70.08.040, 70.46.020, 43.72.902, and 43.72.915; adding a new section to chapter 70.46 RCW; adding new sections to chapter 43.70 RCW; recodifying RCW 41.05.240; repealing 1993 c 492 s 244; repealing 1993 c 492 s 255; repealing 1993 c 492 s 256 (uncodified); providing effective dates; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature declares its intent to implement the recommendations of the public health improvement plan by initiating a program to provide the public health system with the necessary capacity to improve the health outcomes of the population of Washington state and establishing the methodology by which improvement in the health outcomes and delivery of public health activities will be assessed.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 1 through 3 of this act.

(1) "Capacity" means actions that public health jurisdictions must do as part of ongoing daily operations to adequately protect and promote health and prevent disease, injury, and premature death. The public health improvement plan identifies capacity necessary for assessment, policy development, administration, prevention, including promotion and protection, and access and quality.

(2) "Department" means the department of health.

(3) "Local health jurisdiction" means the local health agency, either county or multicounty, operated by local government, with oversight and direction from a local board of health, that provides public health services throughout a defined geographic area.

(4) "Health outcomes" means long-term objectives that define optimal, measurable, future levels of health status, maximum acceptable levels of disease, injury, or dysfunction, or prevalence of risk factors in areas such as improving the rate of immunizations for infants and children to ninety percent and controlling and reducing the spread of tuberculosis and that are stated in the public health improvement plan.

(5) "Public health improvement plan," also known as the public health services improvement plan, means the public health services improvement plan established under RCW 43.70.520, developed by the department, in consultation with local health departments and districts, the state board of health, the health services commission, area Indian health services, and other state agencies, health services providers, and residents concerned about public health, to provide a detailed accounting of deficits in the core functions of assessment, policy development, and assurance of the current public health system, how additional public health funding would be used, and to describe the benefits expected from expanded expenditures.

(6) "Public health" means activities that society does collectively to assure the conditions in which people can be healthy. This includes organized community efforts to prevent, identify, preempt, and counter threats to the public's health.

(7) "Public health system" means the department, the state board of health, and local health jurisdictions.

NEW SECTION. Sec. 3. The primary responsibility of the public health system, is to take those actions necessary to protect, promote, and improve the health of the population. In order to accomplish this, the department shall:

(1) Identify, as part of the public health improvement plan, the key health outcomes sought for the population and the capacity needed by the public health system to fulfill its responsibilities in improving health outcomes.

(2)(a) Distribute state funds that, in conjunction with local revenues, are intended to improve the capacity of the public health system. The distribution methodology shall encourage system-wide effectiveness and efficiency and provide local health jurisdictions with the flexibility both to determine governance structures and address their unique needs.

(b) Enter into with each local health jurisdiction performance-based contracts that establish clear measures of the degree to which the local health jurisdiction is attaining the capacity necessary to improve health outcomes. The contracts negotiated between the local health jurisdictions and the department of health must identify the specific measurable progress that local health jurisdictions will make toward achieving health outcomes. A community assessment conducted by the local health jurisdiction according to the public health improvement plan, which shall include the results of the comprehensive plan prepared according to RCW 70.190.130, will be used as the basis for identifying the health outcomes. The contracts shall include provisions to encourage collaboration among local health jurisdictions. State funds shall be used solely to expand and complement,

but not to supplant city and county government support for public health programs.

(3) Develop criteria to assess the degree to which capacity is being achieved and ensure compliance by public health jurisdictions.

(4) Adopt rules necessary to carry out the purposes of chapter . . . , Laws of 1995 (this act).

(5) Biennially, within the public health improvement plan, evaluate the effectiveness of the public health system, assess the degree to which the public health system is attaining the capacity to improve the status of the public's health, and report progress made by each local health jurisdiction toward improving health outcomes.

Sec. 4. RCW 41.05.240 and 1993 c 492 s 468 are each amended to read as follows:

Consistent with funds appropriated specifically for this purpose, the ((authority)) department shall establish in conjunction with the area Indian health services system and providers an advisory group comprised of Indian and non-Indian health care facilities and providers to formulate an American Indian health care delivery plan. The plan shall include:

- (1) Recommendations to providers and facilities methods for coordinating and joint venturing with the Indian health services for service delivery;
- (2) Methods to improve American Indian-specific health programming; and
- (3) Creation of co-funding recommendations and opportunities for the unmet health services programming needs of American Indians.

NEW SECTION. **Sec. 5.** RCW 41.05.240 shall be recodified as a new section in chapter 43.70 RCW.

Sec. 6. RCW 70.05.030 and 1993 c 492 s 235 are each amended to read as follows:

In counties without a home rule charter, the board of county commissioners shall constitute the local board of health, unless the county is part of a health district pursuant to chapter 70.46 RCW. The jurisdiction of the local board of health shall be coextensive with the boundaries of said county. The board of county commissioners may, at its discretion, adopt an ordinance expanding the size and composition of the board of health to include elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. An ordinance adopted under this section shall include provisions for the appointment, term, and compensation, or reimbursement of expenses.

Sec. 7. RCW 70.05.035 and 1993 c 492 s 237 are each amended to read as follows:

In counties with a home rule charter, the county legislative authority shall establish a local board of health and may prescribe the membership and selection process for the board. The county legislative authority may appoint to the board of health elected officials from cities and towns and persons other than elected

officials as members so long as persons other than elected officials do not constitute a majority. The county legislative authority shall specify the appointment, term, and compensation or reimbursement of expenses. The jurisdiction of the local board of health shall be coextensive with the boundaries of the county. The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the county charter. The same official designated under the provisions of the county charter may appoint an administrative officer, as described in RCW 70.05.045.

Sec. 8. RCW 70.05.050 and 1993 c 492 s 238 are each amended to read as follows:

The local health officer shall be an experienced physician licensed to practice medicine and surgery or osteopathy and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. The local health officer shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. In home rule counties that are part of a health district under this chapter and chapter 70.46 RCW the local health officer and administrative officer shall be appointed by the local board of health.

Sec. 9. RCW 70.08.040 and 1985 c 124 s 4 are each amended to read as follows:

Notwithstanding any provisions to the contrary contained in any city or county charter, where a combined department is established under this chapter, the director of public health under this chapter shall be appointed by the county executive of the county and the mayor of the city ~~((for a term of four years and until a successor is appointed and confirmed. The director of public health may be reappointed by the county executive of the county and the mayor of the city for additional four-year terms))~~. The appointment shall be effective only upon a majority vote confirmation of the legislative authority of the county and the legislative authority of the city. The director may be removed by the county executive of the county, after consultation with the mayor of the city, upon filing a statement of reasons therefor with the legislative authorities of the county and the city.

Sec. 10. RCW 70.46.020 and 1993 c 492 s 247 are each amended to read as follows:

Health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties. The district board of health of such a district shall consist of not less than five members for districts of two counties and seven members for districts of more than two counties, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners of each county within the district, and shall have a jurisdiction coextensive with the combined boundaries. The boards of county commissioners may by resolution or ordinance provide for elected officials from cities and towns and persons other than elected officials as members of the district board of health so long as persons other than elected officials do not constitute a majority. A resolution or ordinance adopted under this section must specify the provisions for the appointment, term, and compensation, or reimbursement of expenses. Any multicounty health district existing on the effective date of this act shall continue in existence unless and until changed by affirmative action of all boards of county commissioners or one or more counties withdraws pursuant to RCW 70.46.090.

At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year.

NEW SECTION. Sec. 11. A new section is added to chapter 70.46 RCW to read as follows:

A health district to consist of one county may be created whenever the county legislative authority of the county shall pass a resolution or ordinance to organize such a health district under chapter 70.05 RCW and this chapter.

The resolution or ordinance may specify the membership, representation on the district health board, or other matters relative to the formation or operation of the health district. The county legislative authority may appoint elected officials from cities and towns and persons other than elected officials as members of the health district board so long as persons other than elected officials do not constitute a majority.

Any single county health district existing on the effective date of this act shall continue in existence unless and until changed by affirmative action of the county legislative authority.

Sec. 12. RCW 43.72.902 and 1993 c 492 s 470 are each amended to read as follows:

The public health services account is created in the state treasury. Moneys in the account may be spent only after appropriation. Moneys in the account may be expended only for maintaining and improving the health of Washington residents through the public health system. For purposes of this section, the public health system shall consist of the state board of health, the state department of health, and local health departments and districts. ~~((Funds appropriated from this account to local health departments and districts shall be~~

~~distributed ratably based on county population as last determined by the office of financial management.))~~

NEW SECTION. Sec. 13. Sections 1 through 3 of this act are each added to chapter 43.70 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.

Sec. 15. RCW 43.72.915 and 1993 sp.s. c 25 s 603 are each amended to read as follows:

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, except for:

(1) Sections 234 through ~~243, 245 through 254, and 257~~ of this act, which shall take effect ~~((July 1, 1995))~~ January 1, 1996 or January 1, 1998, if funding is not provided as set forth in section 17(4) of this act; and

(2) Sections 301 through 303 of this act, which shall take effect January 1, 1994.

NEW SECTION. Sec. 16. The following acts or parts of acts are each repealed, effective June 30, 1995:

- (1) 1993 c 492 s 244;
- (2) 1993 c 492 s 256 (uncodified); and
- (3) 1993 c 492 s 255.

NEW SECTION. Sec. 17. (1) Sections 15 and 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 June 30, 1995.

(2) Sections 1 through 5, 12, 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, 1995.

(3) Section 9 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.

(4) Sections 6 through 8, 10, and 11 of this act take effect January 1, 1996, if funding of at least two million two hundred fifty thousand dollars, is provided by June 30, 1995, in the 1995 omnibus appropriations act or as a result of the passage of Senate Bill No. 6058, to implement the changes in public health governance as outlined in this act. If such funding is not provided, sections 6 through 8, 10, and 11 of this act shall take effect January 1, 1998.

Passed the Senate March 10, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 44

[Substitute Senate Bill 5278]

AWARDS TO PERSONS FOUND NOT GUILTY BY REASON OF SELF-DEFENSE

AN ACT Relating to awards to persons found not guilty by reason of self-defense; and amending RCW 9A.16.110.

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

Sec. 1. RCW 9A.16.110 and 1989 c 94 s 1 are each amended to read as follows:

(1) No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself or herself, his or her family, or his or her real or personal property, or for coming to the aid of another who is in imminent danger of or the victim of assault, robbery, kidnapping, arson, burglary, rape, murder, or any other ~~((heinous))~~ violent crime as defined in RCW 9.94A.030.

(2) ~~When a ((substantial question of self-defense in such a case shall exist which needs legal investigation or court action for the full determination of the facts, and the defendant's actions are subsequently found justified under the intent of this section))~~ person charged with a crime listed in subsection (1) of this section is found not guilty by reason of self-defense, the state of Washington shall ~~((indemnify or))~~ reimburse ~~((such))~~ the defendant for all reasonable costs, including loss of time, legal fees incurred, ((or)) and other expenses involved in his or her defense. This ~~((indemnification or))~~ reimbursement ~~((is an award of reasonable costs which include loss of time, legal fees, or other expenses and))~~ is not an independent cause of action. ~~((The determination of an award shall be by the judge or jury at the discretion of the judge in the criminal proceeding.))~~ To award these reasonable costs the trier of fact must find that the defendant's claim of self-defense was sustained by a preponderance of the evidence ~~((+ PROVIDED, HOWEVER, That nothing shall preclude)).~~ If the trier of fact makes a determination of self-defense, the judge shall determine the amount of the award.

(3) Notwithstanding a finding that a defendant's actions were justified by self-defense, if the trier of fact also determines that the defendant was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant the judge may deny or reduce the amount of the award. In determining the amount of the award, the judge shall also consider the seriousness of the initial criminal conduct.

Nothing in this section precludes the legislature from ((granting a higher award through)) using the sundry claims process to grant an award where none

was granted under this section or to grant a higher award than one granted under this section.

~~((3))~~ (4) Whenever the issue of self-defense under this section is decided by a judge (~~or whenever a judge exercises the discretion authorized under subsection (2) of this section in determining an award~~), the judge shall consider the same questions as must be answered in the special verdict under subsection (4) of this section.

~~((4))~~ (5) Whenever the issue of self-defense under this section has been submitted to a jury, and the jury has found the defendant not guilty, (~~and the judge has submitted an award determination to the jury~~), the court shall instruct the jury to return a special verdict in substantially the following form:

- | | |
|---|------------------|
| | answer |
| | yes or no |
| 1. Was the finding of not guilty based upon self-defense? | |
| 2. If your answer to question 1 is no, do not answer the remaining question. | |
| 3. If your answer to question 1 is yes, was the defendant: | |
| a. Protecting himself or herself? | |
| b. Protecting his or her family? | |
| c. Protecting his or her property? | |
| d. Coming to the aid of another who was in imminent danger of a heinous crime? | |
| e. Coming to the aid of another who was the victim of a heinous crime? | |
| <u>f. Engaged in criminal conduct substantially related to the events giving rise to the crime with which the defendant is charged?</u> | <u>.</u> |

Passed the Senate March 9, 1995.
Passed the House April 5, 1995.
Approved by the Governor April 17, 1995.
Filed in Office of Secretary of State April 17, 1995.

CHAPTER 45

[Senate Bill 5294]

MUNICIPAL FIRE FIGHTERS—RETIREMENT

AN ACT Relating to retirement provisions for municipal fire fighters; and amending RCW 41.24.030.

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

Sec. 1. RCW 41.24.030 and 1992 c 97 s 1 are each amended to read as follows:

(1) There is created in the state treasury a trust fund for the benefit of the fire fighters of the state covered by this chapter, which shall be designated the volunteer fire fighters' relief and pension principal fund and shall consist of:

(a) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(b) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording the members of its fire department with protection from death or disability as provided in this chapter as follows:

(i) Ten dollars for each volunteer or part-paid member of its fire department;

(ii) A sum equal to one and one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(c) Where a municipal corporation has elected to make available to the members of its fire department the retirement provisions as provided in this chapter, an annual fee of sixty dollars for each of its fire fighters electing to enroll therein, thirty dollars of which shall be paid by the municipality and thirty dollars of which shall be paid by the fire fighter. However, nothing in this section prohibits any municipality from voluntarily paying the fire fighters' share of the retirement provision.

(d) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund created in subsection (2) of this section.

(e) The state investment board, upon request of the state treasurer shall have full power to invest or reinvest such portion of the amounts credited to the principal fund as is not, in the judgment of the treasurer, required to meet current withdrawals. Such investments shall be made in the manner prescribed by RCW 43.84.150 and not otherwise.

(f) All bonds or other obligations purchased according to (e) of this subsection shall be forthwith placed in the custody of the state treasurer, and he or she shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

The interest and proceeds from the sale and redemption of any bonds or other obligations held by the fund and invested by the state investment board shall be credited to and form a part of the principal fund, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160.

All amounts credited to the principal fund shall be available for making the benefit payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

(2) The volunteer fire fighters' relief and pension administrative fund is hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after

appropriation, and may be used only for operating expenses of the volunteer fire fighters' relief and pension principal fund, the operating expenses of the volunteer fire fighters' relief and pension administrative fund, or for transfer from the administrative fund to the principal fund.

(a) The state board shall compute a percentage of the amounts credited to the administrative fund to be paid into the principal fund.

(b) For the purpose of providing amounts to be used to defray the cost of administration of the principal and administrative funds, the state board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the administrative fund sufficient to cover estimated expenses for the biennium.

Passed the Senate March 2, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 46

[Senate Bill 5332]

SECURITIES—REVISED PROVISIONS

AN ACT Relating to securities; and amending RCW 21.20.060, 21.20.090, 21.20.270, 21.20.310, 21.20.340, 21.20.380, and 21.20.390.

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

Sec. 1. RCW 21.20.060 and 1994 c 256 s 7 are each amended to read as follows:

The application shall contain whatever information the director requires concerning such matters as:

- (1) The applicant's form and place of organization;
- (2) The applicant's proposed method of doing business;
- (3) The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director;
- (4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; ~~(and)~~
- (5) The applicant's financial condition and history; and
- (6) The address of the principal place of business of the applicant and the addresses of all branch offices of the applicant in this state.

The director ~~((of licenses or the duly appointed administrator))~~ may by rule require a minimum capital for registered broker-dealers and investment advisers or prescribe a ratio between net capital and aggregate indebtedness by type or classification and may by rule allow registrants to maintain a surety bond of appropriate amount as an alternative method of compliance with minimum capital or net capital requirements.

Sec. 2. RCW 21.20.090 and 1994 c 256 s 9 are each amended to read as follows:

Registration of a broker-dealer, salesperson, investment adviser representative, or investment adviser may be renewed by filing with the director or his or her authorized agent prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesperson, investment adviser representative, or investment adviser filed with the director or his or her authorized agent by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer(~~—a financial statement showing the financial condition of such broker-dealer as of a date within ninety days~~) or investment adviser such financial reports as the director may by rule prescribe. A registered broker-dealer or investment adviser may file an application for registration of a successor, and the administrator may at his or her discretion grant or deny the application.

Sec. 3. RCW 21.20.270 and 1975 1st ex.s. c 84 s 14 are each amended to read as follows:

(1) The director may require the person who filed the registration statement to file reports, not more often than quarterly to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the investment company act of 1940, or (b) are being offered and sold directly by or for the account of the issuer. (~~(A ten-dollar fee shall accompany each such report.)~~)

(2) During the period of public offering of securities registered under the provisions of this chapter by qualification financial data or statements corresponding to those required under the provisions of RCW 21.20.210 and to the issuer's fiscal year shall be filed with the director annually, not more than one hundred twenty days after the end of each such year. Such statements at the discretion of the director or administrator shall be certified by a certified public accountant who is not an employee of the issuer, and the director may verify them by examining the issuer's books and records. The certificate of such independent certified public accountant shall be based upon an audit of not less in scope or procedures followed than that which independent public accountants would ordinarily make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the director may prescribe, by rules (~~(and regulations)~~) in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinions of the accountants. Each such report shall state that such independent certified public accountant has verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the director may prescribe by rules (~~(and regulations)~~).

Sec. 4. RCW 21.20.310 and 1994 c 256 s 18 are each amended to read as follows:

RCW 21.20.140 through 21.20.300, inclusive, do not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments are made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section: **PROVIDED**, That the director, by rule or order, may exempt any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise if the director finds that registration with respect to such securities is not necessary in the public interest and for the protection of investors.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments shall be made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized or supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do and actually doing business in this state.

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the interstate commerce commission; (b) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect of equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security which meets the criteria for investment grade securities that the director may adopt by rule.

(9) Any prime quality negotiable commercial paper not intended to be marketed to the general public and not advertised for sale to the general public that is of a type eligible for discounting by federal reserve banks, that arises out of a current transaction or the proceeds of which have been or are to be used for a current transaction, and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal.

(10) Any (~~investment contract~~) security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if: (a) The plan meets the requirements for qualification as a pension, profit sharing, or stock bonus plan under section 401 of the internal revenue code, as an incentive stock option plan under section 422 of the internal revenue code, or as an employee stock purchase plan under section 423 of the internal revenue code; or (b) the director is notified in writing with a copy of the plan thirty days before offering the plan to employees in this state. In the event of late filing of notification the director may upon application, for good cause excuse such late filing if he or she finds it in the public interest to grant such relief.

(11) Any security issued by any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) exclusively for religious, educational, fraternal, or charitable purposes and which nonprofit organization also possesses a current tax exempt status under the laws of the United States, which security is offered or sold only to persons who, prior to their solicitation for the purchase of said securities, were members of, contributors to, or listed as participants in, the organization, or their relatives, if such nonprofit organization first files a notice specifying the terms of the offering and the director does not by order disallow the exemption within the next ten full business days: PROVIDED, That no offerings may be made until expiration of the ten full business days. Every such nonprofit organization which files a notice of exemption of such securities shall pay a filing fee as set forth in RCW 21.20.340(~~(12)~~) (11) as now or hereafter amended.

The notice shall consist of the following:

- (a) The name and address of the issuer;
- (b) The names, addresses, and telephone numbers of the current officers and directors of the issuer;
- (c) A short description of the security, price per security, and the number of securities to be offered;

(d) A statement of the nature and purposes of the organization as a basis for the exemption under this section;

(e) A statement of the proposed use of the proceeds of the sale of the security; and

(f) A statement that the issuer shall provide to a prospective purchaser written information regarding the securities offered prior to consummation of any sale, which information shall include the following statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

(12) Any charitable gift annuities issued by a board of a state university, regional university, or of the state college.

(13) Any charitable gift annuity issued by an insurer or institution holding a certificate of exemption under RCW 48.38.010.

Sec. 5. RCW 21.20.340 and 1994 c 256 s 20 are each amended to read as follows:

The following fees shall be paid in advance under the provisions of this chapter:

(1) For registration of securities by qualification, the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for one additional twelve-month period only the unsold portion for which the registration fee has been paid.

(2) For registration by coordination of securities issued by an investment company, other than a closed-end company, as those terms are defined in the Investment Company Act of 1940, the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for an additional twelve-month period the unsold portion for which the registration fee has been paid.

(3) For registration by coordination of securities not covered by subsection (2) of this section, the initial filing fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state,

based on offering price, plus one-fortieth of one percent for any excess over one hundred thousand dollars for the first twelve-month period plus one hundred dollars for each additional twelve months in which the same offering is continued.

(4) For filing annual financial statements, the fee shall be twenty-five dollars.

(5)(a) For filing an amended offering circular after the initial registration permit has been granted the fee shall be ten dollars.

(b) For filing a report under RCW 21.20.270(1) the fee shall be ten dollars.

(6) For registration of a broker-dealer or investment adviser, the fee shall be one hundred fifty dollars for original registration and seventy-five dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(7) For registration of a salesperson or investment adviser representative, the fee shall be forty dollars for original registration with each employer and twenty dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(8) If a registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative is not renewed on or before December 31st of each year the renewal is delinquent. The director by rule or order may set and assess a fee for delinquency not to exceed two hundred dollars. Acceptance by the director of an application for renewal after December 31st is not a waiver of delinquency. A delinquent application for renewal will not be accepted for filing after March 1st.

(9)(a) For the transfer of a broker-dealer license to a successor, the fee shall be fifty dollars.

(b) For the transfer of a salesperson license from a broker-dealer or issuer to another broker-dealer or issuer, the transfer fee shall be twenty-five dollars.

(c) For the transfer of an investment adviser representative license from an investment adviser to another investment adviser, the transfer fee shall be twenty-five dollars.

(d) For the transfer of an investment adviser license to a successor, the fee shall be fifty dollars.

(10) The director may provide by rule for the filing of notice of claim of exemption under RCW 21.20.320 (1), (9), and (17) and set fees accordingly not to exceed three hundred dollars.

(11) For filing of notification of claim of exemption from registration pursuant to RCW 21.20.310(11), as now or hereafter amended, the fee shall be fifty dollars for each filing.

(12) For rendering interpretative opinions, the fee shall be thirty-five dollars.

(13) For certified copies of any documents filed with the director, the fee shall be the cost to the department.

(14) For a duplicate license the fee shall be five dollars.

All fees collected under this chapter shall be turned in to the state treasury and are not refundable, except as herein provided.

Sec. 6. RCW 21.20.380 and 1994 c 256 s 22 are each amended to read as follows:

(1) For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) If the activities constituting an alleged violation for which the information is sought would be a violation of this chapter had the activities occurred in this state, the director may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state.

(3) In case of disobedience on the part of any person to comply with any subpoena lawfully issued by the director, or on the refusal of any witness to testify to any matters regarding which the witness may be lawfully interrogated, a court of competent jurisdiction of any county or the judge thereof, on application of the director, and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such a court on a refusal to testify therein.

Sec. 7. RCW 21.20.390 and 1994 c 256 s 23 are each amended to read as follows:

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the director may in his or her discretion:

(1) Issue an order directing the person to cease and desist from continuing the act or practice and to take appropriate affirmative action within a reasonable period of time, as prescribed by the director, to correct conditions resulting from the act or practice including, without limitation, a requirement to provide restitution: PROVIDED, That reasonable notice of and opportunity for a hearing shall be given: PROVIDED, FURTHER, That the director may issue a temporary order pending the hearing which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of notice; or

(2) The director may without issuing a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order hereunder. The court may grant such ancillary relief as it deems appropriate. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for

the defendant or the defendant's assets. The director may not be required to post a bond. If the director prevails, the director shall be entitled to a reasonable attorney's fee to be fixed by the court.

(3) Whenever it appears to the director that any person who has received a permit to issue, sell, or otherwise dispose of securities under this chapter, whether current or otherwise, has become insolvent, the director may petition a court of competent jurisdiction to appoint a receiver or conservator for the defendant or the defendant's assets. The director may not be required to post a bond.

(4) The director may bring an action for restitution or damages on behalf of the persons injured by a violation of this chapter, if the court finds that private civil action would be so burdensome or expensive as to be impractical.

Passed the Senate March 7, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 47

[Substitute Senate Bill 5334]

BUSINESS CORPORATION ACT—REVISIONS

AN ACT Relating to the Washington business corporation act; amending RCW 23B.14.220, 23B.14.300, 23B.14.330, 23B.14.340, 23B.07.320, 23B.08.080, and 34.08.020; reenacting and amending RCW 23B.01.400; and adding a new section to chapter 23B.14 RCW.

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

Sec. 1. RCW 23B.01.400 and 1991 c 269 s 35 and 1991 c 72 s 28 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(5) "Deliver" includes (a) mailing and (b) for purposes of delivering a demand, consent, or waiver to the corporation or one of its officers, transmission by facsimile equipment.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" has the meaning provided in RCW 23B.01.410.

(8) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(9) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest, and the state, United States, and a foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

(12) "Governmental subdivision" includes authority, county, district, and municipality.

(13) "Includes" denotes a partial definition.

(14) "Individual" includes the estate of an incompetent or deceased individual.

(15) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(16) "Means" denotes an exhaustive definition.

(17) "Notice" has the meaning provided in RCW 23B.01.410.

(18) "Person" includes an individual and an entity.

(19) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(20) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(21) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute, and that has more than three hundred holders of record of its shares.

(22) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of

the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(23) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(24) "Shares" means the units into which the proprietary interests in a corporation are divided.

(25) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(26) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(27) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(28) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(29) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

Sec. 2. RCW 23B.14.220 and 1989 c 165 s 162 are each amended to read as follows:

(1) A corporation administratively dissolved under RCW 23B.14.210 may apply to the secretary of state for reinstatement within ~~((two))~~ five years after the effective date of dissolution. The application must:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the corporation's name satisfies the requirements of RCW 23B.04.010.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the corporation and give the corporation written notice of the reinstatement that recites the effective date of reinstatement. If the name is not available, the corporation must file articles of amendment changing its name with its application for reinstatement.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation

resumes carrying on its business as if the administrative dissolution had never occurred.

(4) The application must be authorized either by action of the shareholders, or of the corporation's board of directors, membership in both groups determined as of the date of administrative dissolution. If vacancies in the board of directors occur after the date of dissolution, the shareholders, or the remaining directors, even if less than a quorum of the board, may fill the vacancies. A special meeting of the shareholders for purposes of authorizing the application for reinstatement, or for purposes of electing directors, may be called by any person who was an officer, director, or shareholder of the corporation at the time of administrative dissolution.

Sec. 3. RCW 23B.14.300 and 1993 c 290 s 3 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, 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;

(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;

(3) 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.

Sec. 4. RCW 23B.14.330 and 1989 c 165 s 166 are each amended to read as follows:

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in RCW 23B.14.300 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, ~~((and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it))~~ or, with or without ordering dissolution, may make such other orders and decrees and issue such injunctions in the case as justice and equity require.

(2) ~~((After entering the))~~ The court shall not enter or sign any decree of dissolution until it receives a copy of a revenue clearance certificate for the corporation issued pursuant to RCW 82.32.260.

(3) If the court enters a decree of dissolution, the petitioner or moving party shall deliver a certified copy of the decree and a copy of the revenue clearance certificate to the secretary of state, who shall file them. The court shall then direct the winding up and liquidation of the corporation's business and affairs in accordance with RCW 23B.14.050 ~~((and the notification of claimants in accordance with RCW 23B.14.060)).~~

Sec. 5. RCW 23B.14.340 and 1990 c 178 s 6 are each amended to read as follows:

The dissolution of a corporation either: (1) By the ~~((issuance of a certificate of))~~ filing by the secretary of state of its articles of dissolution, (2) by administrative dissolution by the secretary of state, ~~((2))~~ (3) by a decree of court, or ~~((3))~~ (4) by expiration of its period of duration shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding against the corporation may be defended by the corporation in its corporate name.

Sec. 6. RCW 23B.07.320 and 1993 c 290 s 4 are each amended to read as follows:

(1) An agreement among the shareholders of a corporation that is not contrary to public policy and 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))~~ Provides a process by which a deadlock among directors or shareholders may be resolved;

(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.))~~ Unless the agreement provides otherwise, any person who acquires outstanding or newly issued shares in the corporation after an agreement authorized by this section has been effected, whether by purchase, gift, operation of law, or otherwise, is deemed to have assented to the agreement and to be a party to the agreement. A purchaser of shares who is aggrieved because he or she at the time of purchase did not have actual or constructive knowledge of the existence of the agreement may either: (a) Bring an action to rescind the purchase within the earlier of ninety days after discovery of the existence of the agreement or two years after the purchase of the shares; or (h) continue to hold the shares subject to the agreement but with a right of action for any damages resulting from

nondisclosure of the existence of the agreement. A purchaser shall be deemed to have constructive 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. 7. RCW 23B.08.080 and 1989 c 165 s 87 are each amended to read as follows:

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares may participate in the vote to remove the director.

(3) If cumulative voting is authorized, ~~((#))~~ and if less than the entire board is to be removed, no director may ~~((#))~~ be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(4) A director may be removed by the shareholders only at a special meeting called for the purpose of removing the director and the meeting notice must state

that the purpose, or one of the purposes, of the meeting is removal of the director.

NEW SECTION. Sec. 8. A new section is added to chapter 23B.14 RCW to read as follows:

On the first day of each month, the secretary of state shall prepare a list of corporations dissolved during the preceding month pursuant to RCW 23B.14.030, 23B.14.210, and 23B.14.330.

Sec. 9. RCW 34.08.020 and 1987 c 186 s 8 are each amended to read as follows:

There is hereby created a state publication to be called the Washington State Register, which shall be published on no less than a monthly basis. The register shall contain, but is not limited to, the following materials received by the code reviser's office during the pertinent publication period:

(1)(a) The full text of any proposed new or amendatory rule, as defined in RCW 34.05.010, and the citation of any existing rules the repeal of which is proposed, prior to the public hearing on such proposal. Such material shall be considered, when published, to be the official notification of the intended action, and no state agency or official thereof may take action on any such rule except on emergency rules adopted in accordance with RCW 34.05.350, until twenty days have passed since the distribution date of the register in which the rule and hearing notice have been published or a notice regarding the omission of the rule has been published pursuant to RCW 34.05.210(4) as now or hereafter amended;

(b) The small business economic impact statement, if required by RCW 19.85.030, preceding the full text of the proposed new or amendatory rule;

(2) The full text of any new or amendatory rule adopted, and the citation of any existing rule repealed, on a permanent or emergency basis;

(3) Executive orders and emergency declarations of the governor;

(4) Public meeting notices of any and all agencies of state government, including state elected officials whose offices are created by Article III of the state Constitution or RCW 48.02.010;

(5) Rules of the state supreme court which have been adopted but not yet published in an official permanent codification;

(6) Summaries of attorney general opinions and letter opinions, noting the number, date, subject, and other information, and prepared by the attorney general for inclusion in the register;

(7) Juvenile disposition standards and security guidelines proposed and adopted under RCW 13.40.030;

(8) Proposed and adopted rules of the commission on judicial conduct;
(~~and~~)

(9) The maximum allowable rates of interest and retail installment contract service charges filed by the state treasurer under RCW 19.52.025 and 63.14.135. In addition, the highest rate of interest permissible for the current month and the maximum retail installment contract service charge for the current year shall be

published in each issue of the register. The publication of the maximum allowable interest rate established pursuant to RCW 19.52.025 shall be accompanied by the following advisement: **NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION; and**

(10) A list of corporations dissolved during the preceding month filed by the secretary of state under chapter 23B.14 RCW.

Passed the Senate March 9, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 48

[Substitute Senate Bill 5335]

UNIFORM COMMERCIAL CODE—INVESTMENT SECURITIES

AN ACT Relating to updating uniform commercial code provisions on investment securities; amending RCW 62A.8-101, 62A.8-102, 62A.8-104, 62A.8-105, 62A.8-106, 62A.8-107, 62A.8-108, 62A.8-201, 62A.8-202, 62A.8-203, 62A.8-204, 62A.8-205, 62A.8-206, 62A.8-207, 62A.8-208, 62A.8-301, 62A.8-302, 62A.8-303, 62A.8-304, 62A.8-305, 62A.8-306, 62A.8-307, 62A.8-401, 62A.8-402, 62A.8-403, 62A.8-404, 62A.8-405, 62A.8-406, 62A.8-407, 62A.1-206, 62A.4-104, 62A.5-114, 62A.9-103, 62A.9-105, 62A.9-106, 62A.9-203, 62A.9-301, 62A.9-304, 62A.9-305, 62A.9-306, 62A.9-309, 62A.9-312, and 62A.10-104; reenacting and amending RCW 62A.1-105 and 62A.9-302; adding new sections to Title 62A RCW; creating a new section; repealing RCW 21.17.010, 21.17.020, 21.17.030, 21.17.040, 21.17.050, 21.17.060, 21.17.070, 21.17.080, 21.17.090, 21.17.900, 21.17.910, 62A.8-308, 62A.8-309, 62A.8-310, 62A.8-311, 62A.8-312, 62A.8-313, 62A.8-314, 62A.8-315, 62A.8-316, 62A.8-317, 62A.8-318, 62A.8-319, 62A.8-320, 62A.8-321, and 62A.8-408; providing an effective date; and declaring an emergency.

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

PART 1

SHORT TITLE AND GENERAL MATTERS

Sec. 1. RCW 62A.8-101 and 1965 ex.s. c 157 s 8-101 are each amended to read as follows:

SHORT TITLE. This Article (~~shall be known and~~) may be cited as Uniform Commercial Code—Investment Securities.

Sec. 2. RCW 62A.8-102 and 1986 c 35 s 1 are each amended to read as follows:

DEFINITIONS (~~AND INDEX OF DEFINITIONS~~). (1) In this Article (~~unless the context otherwise requires~~):

(a) ~~((A))~~ "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" ~~((is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is~~ ~~(+))~~ means a security that is represented by ~~((an instrument issued in bearer or registered form;~~

~~(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and~~

~~(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations;~~

~~(b-A))~~ a certificate.

(e) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including adoption of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 41(2) (b) or (c) of this act, that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset," except as otherwise provided in RCW 62A.8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type,

dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(i) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honest in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in RCW 62A.8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(r) "Uncertificated security" ((is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is (†)) means a security that is not represented by ((an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(e) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. This Article does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this Article.

(d) A certificated security is in "registered form" if

(i) it specifies a person entitled to the security or the rights it represents, and
(ii) its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.

(e) A certificated security is in "bearer form" if it runs to bearer according to its terms and not by reason of any indorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation:

(a) At least 90 percent of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of 20 percent of the capital stock of the corporation; and each of which is

(i) subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws;

(ii) a broker or dealer or investment company registered under the federal securities laws; or

(iii) a national securities exchange or association registered under the federal securities laws; and

(b) Any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the

~~corporation and who have purchased only so much of the capital stock as is necessary to permit them to qualify as directors:~~

~~(4) A "custodian bank" is a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation:~~

~~(5)) a certificate.~~

~~(2) Other definitions applying to this Article ((or to specified Parts thereof) and the sections in which they appear are:~~

~~("Adverse claim". RCW 62A.8-302.~~

~~"Bona fide purchaser". RCW 62A.8-302.~~

~~"Broker". RCW 62A.8-303.~~

~~"Debtor". RCW 62A.9-105.~~

~~"Financial intermediary". RCW 62A.8-313.~~

~~"Guarantee of the signature". RCW 62A.8-402.~~

~~"Initial transaction statement". RCW 62A.8-408.~~

~~"Instruction". RCW 62A.8-308.~~

~~"Intermediary bank". RCW 62A.4-105.~~

~~"Issuer". RCW 62A.8-201.~~

~~"Overissue". RCW 62A.8-104.~~

~~"Secured party". RCW 62A.9-105.~~

~~"Security agreement". RCW 62A.9-105.~~

~~(6)) Appropriate person RCW 62A.8-107~~

~~Control RCW 62A.8-106~~

~~Delivery RCW 62A.8-301~~

~~Investment company security RCW 62A.8-103~~

~~Issuer RCW 62A.8-201~~

~~Overissue Section 26 of this act~~

~~Protected purchaser RCW 62A.8-303~~

~~Securities account Section 41 of this act~~

~~(3) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.~~

~~(4) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.~~

Sec. 3. RCW 62A.8-103 and 1986 c 35 s 2 are each amended to read as follows:

~~((ISSUER'S LIEN. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:~~

~~(a) the security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or~~

~~(b) the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the~~

~~registered-pledgee.))~~ RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in section 61 of this act, is not a security or a financial asset.

Sec. 4. RCW 62A.8-104 and 1986 c 35 s 3 are each amended to read as follows:

~~((EFFECT OF OVERISSUE; "OVERISSUE". (1) The provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but if:~~

~~(a) an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for him and either to deliver a certificated security or to register the transfer of an uncertificated security to him, against surrender of any certificated security he holds; or~~

~~(b) a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.~~

~~(2) "Overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue.))~~ ACQUISITION OF SECURITY OR FINANCIAL ASSET OR INTEREST THEREIN. (1) A person acquires a security or an interest therein, under this Article, if:

(a) The person is a purchaser to whom a security is delivered pursuant to RCW 62A.8-301; or

(b) The person acquires a security entitlement to the security pursuant to section 41 of this act.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5 of this Article, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in section 43 of this act.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2) of this section.

Sec. 5. RCW 62A.8-105 and 1986 c 35 s 4 are each amended to read as follows:

~~((CERTIFICATED SECURITIES NEGOTIABLE; STATEMENTS AND INSTRUCTIONS NOT NEGOTIABLE; PRESUMPTIONS. (1) Certificated securities governed by this Article are negotiable instruments.~~

~~(2) Statements (RCW 62A.8-408), notices, or the like, sent by the issuer of uncertificated securities and instructions (RCW 62A.8-308) are neither negotiable instruments nor certificated securities.~~

~~(3) In any action on a security:~~

~~(a) unless specifically denied in the pleadings, each signature on a certificated security, in a necessary indorsement, on an initial transaction statement, or on an instruction, is admitted;~~

~~(b) if the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;~~

~~(c) if signatures on a certificated security are admitted or established, production of the security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;~~

~~(d) if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and~~

~~(e) after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (RCW 62A.8-202).) NOTICE OF ADVERSE CLAIM. (1) A person has notice of an adverse claim if:~~

(a) The person knows of the adverse claim;

(b) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) One year after a date set for presentment or surrender for redemption or exchange; or

(b) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under Article 9 is not notice of an adverse claim to a financial asset.

Sec. 6. RCW 62A.8-106 and 1986 c 35 s 5 are each amended to read as follows:

~~((APPLICABILITY. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:~~

~~(a) registration of transfer of a certificated security;~~

~~(b) registration of transfer, pledge, or release of an uncertificated security; and~~

~~(c) sending of statements of uncertificated securities.)) CONTROL. (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.~~

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(a) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) The uncertificated security is delivered to the purchaser; or

(b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) The purchaser becomes the entitlement holder; or

(b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) of this section has control even if the registered owner in the case of subsection (3)(b) of this section or the entitlement holder in the case of subsection (4)(b) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

Sec. 7. RCW 62A.8-107 and 1986 c 35 s 6 are each amended to read as follows:

~~((SECURITIES TRANSFERABLE; ACTION FOR PRICE. (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee, or indorsed to him or in blank, or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.~~

~~(2) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:~~

~~(a) certificated securities accepted by the buyer;~~

~~(b) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and~~

~~(c) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.)) WHETHER INDORSE-~~

MENT, INSTRUCTION, OR ENTITLEMENT IS EFFECTIVE. (1) "Appropriate person" means:

(a) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(b) With respect to an instruction, the registered owner of an uncertificated security;

(c) With respect to an entitlement order, the entitlement holder;

(d) If the person designated in (a), (b), or (c) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(e) If the person designated in (a), (b), or (c) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) It is made by the appropriate person;

(b) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under RCW 62A.8-106 (3)(b) or (4)(b); or

(c) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made and an indorsement instruction or, entitlement, order does not become ineffective by reason of any later change of circumstances.

Sec. 8. RCW 62A.8-108 and 1986 c 35 s 7 are each amended to read as follows:

~~((REGISTRATION OF PLEDGE AND RELEASE OF UNCERTIFICATED SECURITIES. A security interest in an uncertificated security may be evidenced~~

~~by the registration of pledge to the secured party or a person designated by him. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this Article are terminated by the registration of release.))~~ WARRANTIES IN DIRECT HOLDING. (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(a) The certificate is genuine and has not been materially altered;

(b) The transferor or indorser does not know of any fact that might impair the validity of the security;

(c) There is no adverse claim to the security;

(d) The transfer does not violate any restriction on transfer;

(e) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(f) The transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(b) The security is valid;

(c) There is no adverse claim to the security; and

(d) At the time the instruction is presented to the issuer:

(i) The purchaser will be entitled to the registration of transfer;

(ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) The transfer will not violate any restriction on transfer; and

(iv) The requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(a) The uncertificated security is valid;

(b) There is no adverse claim to the security;

(c) The transfer does not violate any restriction on transfer; and

(d) The transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:

(a) There is no adverse claim to the security; and

(b) The indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(a) The instruction is effective; and

(b) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7) of this section.

(9) Except as otherwise provided in subsection (7) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security makes to the customer the warranties provided in subsection (1) or (2) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

NEW SECTION. Sec. 9. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-109, to read as follows:

WARRANTIES IN INDIRECT HOLDING. (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(b) There is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in RCW 62A.8-108 (1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an

uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in RCW 62A.8-108 (1) or (2).

NEW SECTION. Sec. 10. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-110, to read as follows:

APPLICABILITY; CHOICE OF LAW. (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:

- (a) The validity of a security;
 - (b) The rights and duties of the issuer with respect to registration of transfer;
 - (c) The effectiveness of registration of transfer by the issuer;
 - (d) Whether the issuer owes any duties to an adverse claimant to a security;
- and

(e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:

- (a) Acquisition of a security entitlement from the securities intermediary;
- (b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
- (c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (1) (b) through (e) of this section.

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(b) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in (a) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in (a) or (b) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the

office identified in an account statement as the office serving the entitlement holder's account.

(d) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in (a) or (b) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in (c) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

NEW SECTION. Sec. 11. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-111, to read as follows:

CLEARING CORPORATION RULES. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Title and affects another party who does not consent to the rule.

NEW SECTION. Sec. 12. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-112, to read as follows:

CREDITOR'S LEGAL PROCESS. (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4) of this section.

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4) of this section.

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim

by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

NEW SECTION. Sec. 13. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-113, to read as follows:

STATUTE OF FRAUDS INAPPLICABLE. A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

NEW SECTION. Sec. 14. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-114, to read as follows:

EVIDENTIARY RULES CONCERNING CERTIFICATED SECURITIES. The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

NEW SECTION. Sec. 15. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-115, to read as follows:

SECURITIES INTERMEDIARY AND OTHERS NOT LIABLE TO ADVERSE CLAIMANT. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

NEW SECTION. **Sec. 16.** A new section is added to Title 62A RCW, to be codified as RCW 62A.8-116, to read as follows:

SECURITIES INTERMEDIARY AS PURCHASER FOR VALUE. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

PART 2
ISSUE(—) AND ISSUER

Sec. 17. RCW 62A.8-201 and 1986 c 35 s 8 are each amended to read as follows:

(~~="~~)ISSUER(~~"~~). (1) With respect to an obligation(~~(s)~~) on or a defense(~~(s)~~) to a security, an "issuer" includes a person (~~(who)~~) that:

(a) Places or authorizes the placing of ((his)) its name on a ((certificated)) security ((otherwise)) certificate, other than as authenticating trustee, registrar, transfer agent, or the like((s)), to evidence ((that it represents)) a share, participation, or other interest in ((his)) its property or in an enterprise, or to evidence ((his)) its duty to perform an obligation represented by the ((certificated security)) certificate;

(b) Creates a share((s)), participation((s)), or other interest((s)) in ((his)) its property or in an enterprise, or undertakes an obligation((s)), ((which shares, participations, interests, or obligations are)) that is an uncertificated ((securities)) security;

(c) Directly or indirectly creates a fractional interest((s)) in ((his)) its rights or property, ((which)) if the fractional interest((s-are)) is represented by ((certificated securities)) a security certificate; or

(d) Becomes responsible for, or in place of ((any other)), another person described as an issuer in this section.

(2) With respect to an obligation(~~(s)~~) on or defense(~~(s)~~) to a security, a guarantor is an issuer to the extent of ((his)) its guaranty, whether or not ((his)) its obligation is noted on a ~~((certificated security or on statements of uncertificated securities sent pursuant to RCW 62A.8-408))~~ security certificate.

(3) With respect to registration of a transfer, ~~((pledge, or release (Part 4 of this Article, ")))~~ issuer(~~"~~) means a person on whose behalf transfer books are maintained.

Sec. 18. RCW 62A.8-202 and 1986 c 35 s 9 are each amended to read as follows:

ISSUER'S RESPONSIBILITY AND DEFENSES; NOTICE OF DEFECT OR DEFENSE. (1) Even against a purchaser for value and without notice, the terms of a certificated security include(~~(+~~

~~(a) if the security is certificated, those stated on the security;~~

~~(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser, or if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and~~

~~(c) those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this paragraph does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.~~

~~(2) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect.~~

This subsection)) terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in an instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) of this section applies to an issuer that is a government or governmental subdivision, agency, or ((unit)) instrumentality only if ((either)) there has been substantial compliance with the legal requirements governing the

issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in ~~((the case of certain unauthorized signatures ()))~~ RCW 62A.8-205(~~(3)~~), lack of genuineness of a certificated security ~~((or an initial transaction statement))~~ is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a ~~((certificated or uncertificated))~~ security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) ~~((Nothing in))~~ This section ~~((shall be construed to))~~ does not affect the right of a party to cancel a contract for a security "when, as and if issued" or ~~((a))~~ "when distributed" ~~((contract to cancel the contract))~~ in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

Sec. 19. RCW 62A.8-203 and 1986 c 35 s 10 are each amended to read as follows:

STALENESS AS NOTICE OF DEFECT~~((S))~~ OR DEFENSE~~((S))~~. ~~((+))~~
After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or ~~((that sets))~~ setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if ~~((~~

~~((a))~~ the act or event ~~((is one requiring))~~:

(1) Requires the payment of money, the delivery of a certificated ~~((securities))~~ security, the registration of transfer of an uncertificated ~~((securities))~~ security, or any of ~~((these))~~ them on presentation or surrender of the ~~((certificated))~~ security certificate, the ~~((funds))~~ money or ~~((securities are))~~ security is available on the date set for payment or exchange, and ~~((he))~~ the purchaser takes the security more than one year after that date; ~~((and~~

~~((b) the act or event))~~ or

(2) Is not covered by ~~((paragraph (a))~~ subsection (1) of this section and ~~((he))~~ the purchaser takes the security more than ~~((2))~~ two years after the date set for surrender or presentation or the date on which performance became due.

~~((2) A call that has been revoked is not within subsection (1).))~~

Sec. 20. RCW 62A.8-204 and 1986 c 35 s 11 are each amended to read as follows:

EFFECT OF ISSUER'S RESTRICTIONS ON TRANSFER. A restriction on transfer of a security imposed by the issuer, even ~~((though))~~ if otherwise lawful, is ineffective against ~~((any))~~ a person without ~~((actual))~~ knowledge of ~~((it))~~ the restriction unless:

~~((a))~~ (1) The security is certificated and the restriction is noted conspicuously ~~((thereon))~~ on the security certificate; or

~~((b))~~ (2) The security is uncertificated and ~~((a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to))~~ the registered owner ~~((or the registered pledgee))~~ has been notified by the restriction.

Sec. 21. RCW 62A.8-205 and 1986 c 35 s 12 are each amended to read as follows:

EFFECT OF UNAUTHORIZED SIGNATURE ON ~~((CERTIFICATED))~~ SECURITY ~~((OR INITIAL TRANSACTION STATEMENT))~~ CERTIFICATE.

An unauthorized signature placed on a ~~((certificated))~~ security ~~((prior to))~~ certificate before or in the course of issue ~~((or placed on an initial transaction statement))~~ is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security ~~((or a purchaser for value of an uncertificated security to whom such initial transaction statement has been sent.))~~ if the purchaser is without notice of the lack of authority and the signing has been done by:

~~((a))~~ (1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security~~((s))~~ certificate or of similar ~~((securities, or of initial transaction statements))~~ certificates, or the immediate preparation for signing of any of them; or

~~((b))~~ (2) An employee of the issuer, or of any of the ~~((foregoing))~~ persons listed in subsection (1) of this section, entrusted with responsible handling of the security ~~((or initial transaction statement))~~ certificate.

Sec. 22. RCW 62A.8-206 and 1986 c 35 s 13 are each amended to read as follows:

COMPLETION OR ALTERATION OF ~~((CERTIFICATED))~~ SECURITY ~~((OR INITIAL TRANSACTION STATEMENT))~~ CERTIFICATE. (1) If a ~~((certificated))~~ security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete ~~((certificated))~~ security certificate that has been improperly altered, even ~~((though))~~ if fraudulently, remains enforceable, but only according to its original terms.

~~((3) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:~~

~~(a) any person may complete it by filling in the blanks as authorized; and
(b) even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.~~

~~(4) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.))~~

Sec. 23. RCW 62A.8-207 and 1986 c 35 s 14 are each amended to read as follows:

RIGHTS AND DUTIES OF ISSUER WITH RESPECT TO REGISTERED OWNERS ~~((AND REGISTERED PLEDGEEES))~~. (1) ~~((Prior to))~~ Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, ~~((to))~~ receive notifications, and otherwise ~~((to))~~ exercise all the rights and powers of an owner.

~~(2) ((Subject to the provisions of subsections (3), (4), and (6), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.~~

~~(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.~~

~~(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:~~

~~(a) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;~~

~~(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or~~

~~(c) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.~~

~~(5) Continuity of perfection of a security interest is not broken by registration of transfer under subsection (4)(b) or by registration of release and pledge under subsection (4)(c), if the security interest is assigned.~~

~~(6) If an uncertificated security is subject to a registered pledge:~~

~~(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;~~

~~(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and
(e) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.~~

~~(7) Nothing in~~ This Article ~~((shall be construed to))~~ does not affect the liability of the registered owner of a security for a call~~((s))~~, assessment~~((s))~~, or the like.

Sec. 24. RCW 62A.8-208 and 1986 c 35 s 15 are each amended to read as follows:

EFFECT OF SIGNATURE OF AUTHENTICATING TRUSTEE, REGISTRAR, OR TRANSFER AGENT. (1) A person ~~((placing his signature upon a certificated))~~ signing a security ~~((or an initial transaction statement))~~ certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security ~~((or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent)),~~ if the purchaser is without notice of ~~((the))~~ a particular defect, that:

(a) ~~The ((certificated security or initial transaction statement))~~ certificate is genuine;

(b) ~~((his))~~ The person's own participation in the issue ~~((or registration of the transfer, pledge, or release))~~ of the security is within ~~((his))~~ the person's capacity and within the scope of the authority received by ~~((him))~~ the person from the issuer; and

(c) ~~((he))~~ The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person ~~((by so placing his signature))~~ signing under subsection (1) of this section does not assume responsibility for the validity of the security in other respects.

NEW SECTION. **Sec. 25.** A new section is added to Title 62A RCW, to be codified as RCW 62A.8-209, to read as follows:

ISSUER'S LIEN. A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

NEW SECTION. **Sec. 26.** A new section is added to Title 62A RCW, to be codified as RCW 62A.8-210, to read as follows:

OVERISSUE. (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4) of this section, the provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the

issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

PART 3

((PURCHASE)) TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

Sec. 27. RCW 62A.8-301 and 1986 c 35 s 16 are each amended to read as follows:

~~((RIGHTS ACQUIRED BY PURCHASER OR TRANSFEREE. (1) Upon transfer of a security to a purchaser (RCW 62A.8-313), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey unless the purchaser's rights are limited by RCW 62A.8-302(4).~~

~~(2) A transferee of a limited interest acquires rights only to the extent of the interest transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.))~~ DELIVERY. (1) Delivery of a certificated security to a purchaser occurs when:

(a) The purchaser acquires possession of the security certificate;

(b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

Sec. 28. RCW 62A.8-302 and 1986 c 35 s 17 are each amended to read as follows:

~~(("BONA FIDE PURCHASER"; "ADVERSE CLAIM"; TITLE ACQUIRED BY BONA FIDE PURCHASER. (1) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:~~

~~(a) who takes delivery of a certificated security in bearer form or in registered form, issued or indorsed to him or in blank;~~

~~(b) to whom the transfer, pledge or release of an uncertificated security is registered on the books of the issuer; or~~

~~(e) to whom a security is transferred under the provisions of paragraph (e); (d)(i), or (g) of RCW 62A.8-313(1).~~

~~(2) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.~~

~~(3) A bona fide purchaser in addition to acquiring the rights of a purchaser (RCW 62A.8-301) also acquires his interest in the security free of any adverse claim.~~

~~(4) Notwithstanding RCW 62A.8-301(1), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve his position by taking from a bona fide purchaser.)~~ RIGHTS OF PURCHASER. (1) Except as otherwise provided in subsections (2) and (3) of this section, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

Sec. 29. RCW 62A.8-303 and 1986 c 35 s 18 are each amended to read as follows:

~~(("BROKER". "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to, a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject.))~~ PROTECTED PURCHASER.

(1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(a) Gives value;

(b) Does not have notice of any adverse claim to the security; and

(c) Obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

Sec. 30. RCW 62A.8-304 and 1986 c 35 s 19 are each amended to read as follows:

~~((NOTICE TO PURCHASER OF ADVERSE CLAIMS. (1) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:~~

~~(a) the security, whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or~~

~~(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.~~

~~(2) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under RCW 62A.8-403(4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.~~

~~(3) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.)) INDORSEMENT. (1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.~~

~~(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.~~

~~(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.~~

~~(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.~~

~~(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.~~

~~(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in RCW 62A.8-108 and not an obligation that the security will be honored by the issuer.~~

Sec. 31. RCW 62A.8-305 and 1986 c 35 s 20 are each amended to read as follows:

~~((STALENESS AS NOTICE OF ADVERSE CLAIMS. An act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or sets a date on or after which a certificated security is to be presented or surrendered for redemption or exchange does not itself constitute any notice of adverse claims except in the case of a transfer:~~

~~(a) after one year from any date set for presentment or surrender for redemption or exchange; or~~

~~(b) after 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.)) INSTRUCTION. (1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.~~

~~(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by RCW 62A.8-108 and not an obligation that the security will be honored by the issuer.~~

Sec. 32. RCW 62A.8-306 and 1986 c 35 s 21 are each amended to read as follows:

~~((WARRANTIES ON PRESENTMENT AND TRANSFER OF CERTIFICATED SECURITIES; WARRANTIES OF ORIGINATORS OF INSTRUCTIONS. (1) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value and without notice of adverse claims who receives a new, reissued, or re-registered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (RCW 62A.8-311) in a necessary indorsement.~~

~~(2) A person by transferring a certificated security to a purchaser for value warrants only that:~~

~~(a) his transfer is effective and rightful;~~

~~(b) the security is genuine and has not been materially altered; and~~

~~(c) he knows of no fact which might impair the validity of the security.~~

~~(3) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only his own good faith and authority, even though he has purchased or made advances against the claim to be collected against the delivery.~~

~~(4) A pledgee or other holder for security who redelivers a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection (3).~~

~~(5) A person who originates an instruction warrants to the issuer that:~~
~~(a) he is an appropriate person to originate the instruction; and~~
~~(b) at the time the instruction is presented to the issuer he will be entitled to the registration of transfer, pledge, or release.~~

~~(6) A person who originates an instruction warrants to any person specially guaranteeing his signature (RCW 62A.8-312(3)) that:~~

~~(a) he is an appropriate person to originate the instruction; and~~
~~(b) at the time the instruction is presented to the issuer~~
~~(i) he will be entitled to the registration of transfer, pledge, or release; and~~
~~(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.~~

~~(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (RCW 62A.8-312(6)) that:~~

~~(a) he is an appropriate person to originate the instruction;~~
~~(b) the uncertificated security referred to therein is valid; and~~
~~(c) at the time the instruction is presented to the issuer~~
~~(i) the transferor will be entitled to the registration of transfer, pledge, or release;~~

~~(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and~~

~~(iii) the requested transfer, pledge, or release will be rightful.~~

~~(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraphs (b), (c)(ii) and (c)(iii) of subsection (7).~~

~~(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:~~

~~(a) his transfer is effective and rightful; and~~

~~(b) the uncertificated security is valid.~~

~~(10) A broker gives to his customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.)~~

EFFECT OF GUARANTEEING SIGNATURE, INDORSEMENT, OR INSTRUCTION. (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(a) The signature was genuine;
(b) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(c) The signer had legal capacity to sign.
(2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(a) The signature was genuine;
(b) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(c) The signer had legal capacity to sign.
(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) of this section and also warrants that at the time the instruction is presented to the issuer:

(a) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(b) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) of this section or a special guarantor under subsection (3) of this section does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) of this section and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) of this section and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

Sec. 33. RCW 62A.8-307 and 1986 c 35 s 22 are each amended to read as follows:

~~((EFFECT OF DELIVERY WITHOUT INDORSEMENT; RIGHT TO COMPEL INDORSEMENT. If a certificated security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.))~~
PURCHASER'S RIGHT TO REQUISITES FOR REGISTRATION OF TRANSFER. Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

PART 4 REGISTRATION

Sec. 34. RCW 62A.8-401 and 1986 c 35 s 37 are each amended to read as follows:

DUTY OF ISSUER TO REGISTER TRANSFER~~((PLEDGE, OR RELEASE)).~~ (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer~~((pledge, or release))~~ of an uncertificated security, the issuer shall register the transfer~~((pledge, or release))~~ as requested if:

(a) ~~((the security is indorsed or the instruction was originated by the appropriate person or persons (RCW 62A.8-308);~~

(b) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(b) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) Reasonable assurance is given that ((those)) the indorsement((s)) or instruction((s-are)) is genuine and ((effective)) authorized (RCW 62A.8-402);

~~((e) the issuer has no duty as to adverse claims or has discharged the duty (RCW 62A.8-403);))~~

(d) Any applicable law relating to the collection of taxes has been complied with; ((and))

(e) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with RCW 62A.8-204;

(f) A demand that the issuer not register transfer has not become effective under RCW 62A.8-403, or the issuer has complied with RCW 62A.8-403(2) but no legal process or indemnity bond is obtained as provided in RCW 62A.8-403(4); and

(g) The transfer(~~(, pledge, or release)~~) is in fact rightful or is to a (~~(bona fide)~~) protected purchaser.

(2) If an issuer is under a duty to register a transfer(~~(, pledge, or release)~~) of a security, the issuer is (~~(also)~~) liable to (~~(the)~~) a person presenting a certificated security or an instruction for registration or ((his)) to the person's principal for loss resulting from ((any)) unreasonable delay in registration or ((from)) failure or refusal to register the transfer(~~(, pledge, or release)~~).

Sec. 35. RCW 62A.8-402 and 1986 c 35 s 38 are each amended to read as follows:

ASSURANCE THAT INDORSEMENT(~~(S-AND)) OR INSTRUCTION(~~(S-ARE)) IS EFFECTIVE.~~~~ (1) (~~(The)~~) An issuer may require the following assurance that each necessary indorsement ((of a certificated security)) or each instruction ((RCW 62A.8-308)) is genuine and ((effective)) authorized:

(a) In all cases, a (~~(guarantee)~~) guaranty of the signature (~~((RCW 62A.8-312 (1) or (2)))~~) of the person (~~((indorsing a certificated security))~~) making an indorsement or originating an instruction including, in the case of an instruction, (~~((a warranty of the taxpayer identification number or, in the absence thereof, other))~~) reasonable assurance of identity;

(b) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(c) If the indorsement is made or the instruction is originated by a fiduciary pursuant to RCW 62A.8-107(1) (d) or (e), appropriate evidence of appointment or incumbency;

(d) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) If the indorsement is made or the instruction is originated by a person not covered by ((any of the foregoing)) another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the ((foregoing)) provisions of this subsection.

(2) (~~(A)~~) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) "~~((guarantee))~~ Guaranty of the signature" (~~((in subsection (1)))~~) means a (~~(guarantee)~~) guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. (~~(The)~~) An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(~~(3)~~) (b) "Appropriate evidence of appointment or incumbency" (~~((in subsection (1) means))~~):

(~~(a)~~) (i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of ((that)) the court or an officer thereof and dated within ((60)) sixty days before the date of presentation for transfer(~~(, pledge, or release)~~); or

(~~(b)~~) (ii) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by ((the))

an issuer to be responsible or, in the absence of that document or certificate, other evidence ((reasonably deemed by)) the issuer ((to be)) reasonably considered appropriate. ((The issuer may adopt standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

~~(4) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in subsection (3)(b), both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, bylaws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.)~~

Sec. 36. RCW 62A.8-403 and 1986 c 35 s 39 are each amended to read as follows:

~~(ISSUER'S DUTY AS TO ADVERSE CLAIMS. (1) An issuer to whom a certificated security is presented for registration shall inquire into adverse claims if:~~

~~(a) a written notification of an adverse claim is received at a time and in a manner affording the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued, or re-registered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part, and provides an address for communications directed to the claimant; or~~

~~(b) the issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require under RCW 62A.8-402(4).~~

~~(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or, if there be no such address, at his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:~~

~~(a) an appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or~~

~~(b) there is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.~~

~~(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under RCW 62A.8-402(4) or receives notification of an adverse claim under subsection (1), if a certificated security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:~~

~~(a) an issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;~~

~~(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and~~

~~(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.~~

~~(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:~~

~~(a) claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);~~

~~(b) claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);~~

~~(c) claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to him; and~~

~~(d) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under RCW 62A.8-402(4).~~

~~(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:~~

~~(a) including a notation of the claim in any statements sent with respect to the security under RCW 62A.8-408 (3), (6), and (7); and~~

~~(b) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.~~

~~(6) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under RCW 62A.8-408.~~

~~(7) Notwithstanding subsections (4) and (5), if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of~~

~~the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:~~

~~(a) the claim was embodied in legal process which expressly provides otherwise;~~

~~(b) the claim was asserted in a written notification from the registered pledgee;~~

~~(c) the claim was one as to which the issuer was charged with notice from a controlling instrument it required under RCW 62A.8-402(4) in connection with the pledgee's request for transfer; or~~

~~(d) the transfer requested is to the registered owner.)~~ DEMAND THAT ISSUER NOT REGISTER TRANSFER. (1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (a) the person who initiated the demand at the address provided in the demand and (b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(i) The certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received;

(ii) A demand that the issuer not register transfer had previously been received; and

(iii) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(b)(iii) of this section may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

Sec. 37. RCW 62A.8-404 and 1986 c 35 s 40 are each amended to read as follows:

~~(LIABILITY AND NON-LIABILITY FOR REGISTRATION. (1) Except as provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:~~

~~(a) there were on or with a certificated security the necessary indorsements or the issuer had received an instruction originated by an appropriate person (RCW 62A.8-308); and~~

~~(b) the issuer had no duty as to adverse claims or has discharged the duty (RCW 62A.8-403).~~

~~(2) If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on demand shall deliver a like security to the true owner unless:~~

~~(a) the registration was pursuant to subsection (1);~~

~~(b) the owner is precluded from asserting any claim for registering the transfer under RCW 62A.8-405(1); or~~

~~(c) the delivery would result in overissue, in which case the issuer's liability is governed by RCW 62A.8-104.~~

~~(3) If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:~~

~~(a) the registration was pursuant to subsection (1); or~~

~~(b) the registration would result in overissue, in which case the issuer's liability is governed by RCW 62A.8-104.)~~ WRONGFUL REGISTRATION. (1)

Except as otherwise provided in RCW 62A.8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) Pursuant to an ineffective indorsement or instruction;

(b) After a demand that the issuer not register transfer became effective under RCW 62A.8-403(1) and the issuer did not comply with RCW 62A.8-403(2);

(c) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(d) By an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by section 26 of this act.

(3) Except as otherwise provided in subsection (1) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

Sec. 38. RCW 62A.8-405 and 1986 c 35 s 41 are each amended to read as follows:

REPLACEMENT OF LOST, DESTROYED, ((AND STOLEN CERTIFICATED SECURITIES)) OR WRONGFULLY TAKEN SECURITY CERTIFICATE. (1) ~~((If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under RCW 62A.8-404 or any claim to a new security under this section.~~

(2)) If ((the)) an owner of a certificated security, whether in registered or bearer form, claims that the ((security)) certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new ((certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security)) certificate if the owner:

(a) So requests before the issuer has notice that the ((security)) certificate has been acquired by a ((bona fide)) protected purchaser;

(b) Files with the issuer a sufficient indemnity bond; and

(c) Satisfies any other reasonable requirements imposed by the issuer.

((3)) (2) If, after the issue of a new ((certificated or uncertificated)) security certificate, a ((bona fide)) protected purchaser of the original ((certificated security)) certificate presents it for registration of transfer, the issuer shall register the transfer unless ((registration would result in)) an overissue((in which event)) would result. In that case, the issuer's liability is governed by ((RCW 62A.8-104)) section 25 of this act. In addition to any rights on the indemnity bond, ((the)) an issuer may recover the new ((certificated security)) certificate from the person to whom it was issued or any person taking under ((him)) that person, except a ((bona fide)) protected purchaser ((or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof)).

Sec. 39. RCW 62A.8-406 and 1986 c 35 s 42 are each amended to read as follows:

~~(DUTY OF AUTHENTICATING TRUSTEE, TRANSFER AGENT, OR REGISTRAR. (1) If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities, in the issue of new securities, or in the cancellation of surrendered securities:~~

~~(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and~~

~~(b) with regard to the particular functions he performs, he has the same obligation to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.~~

~~(2) Notice to an authenticating trustee, transfer agent, registrar or other agent is notice to the issuer with respect to the functions performed by the agent.)~~

OBLIGATION TO NOTIFY ISSUER OF LOST, DESTROYED, OR WRONGFULLY TAKEN SECURITY CERTIFICATE. If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under RCW 62A.8-404 or a claim to a new security certificate under RCW 62A.8-405.

Sec. 40. RCW 62A.8-407 and 1986 c 35 s 43 are each amended to read as follows:

~~(EXCHANGEABILITY OF SECURITIES. (1) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.~~

~~(2) Upon surrender of a certificated security with all necessary indorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (RCW 62A.8-403), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.~~

~~(3) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:~~

~~(a) the registered owner, if the uncertificated security was not subject to a registered pledge; or~~

~~(b) the registered pledgee, if the uncertificated security was subject to a registered pledge.)~~ AUTHENTICATING TRUSTEE, TRANSFER AGENT, AND REGISTRAR. A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

PART 5 SECURITY ENTITLEMENTS

NEW SECTION, Sec. 41. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-501, to read as follows:

SECURITIES ACCOUNT; ACQUISITION OF SECURITY ENTITLEMENT FROM SECURITIES INTERMEDIARY. (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5) of this section, a person acquires a security entitlement if a securities intermediary:

(a) Indicates by book entry that a financial asset has been credited to the person's securities account;

(b) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(c) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If a condition of subsection (2) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement.

NEW SECTION, Sec. 42. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-502, to read as follows:

ASSERTION OF ADVERSE CLAIM AGAINST ENTITLEMENT HOLDER. An action based on an adverse claim to a financial asset, whether

framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under section 41 of this act for value and without notice of the adverse claim.

NEW SECTION. Sec. 43. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-503, to read as follows:

PROPERTY INTEREST OF ENTITLEMENT HOLDER IN FINANCIAL ASSET HELD BY SECURITIES INTERMEDIARY. (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 51 of this act.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 45 through 48 of this act.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(a) Insolvency proceedings have been initiated by or against the securities intermediary;

(b) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(c) The securities intermediary violated its obligations under section 44 of this act by transferring the financial asset or interest therein to the purchaser; and

(d) The purchaser is not protected under subsection (5) of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(5) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities

intermediary in violating the securities intermediary's obligations under section 44 of this act.

NEW SECTION. Sec. 44. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-504, to read as follows:

DUTY OF SECURITIES INTERMEDIARY TO MAINTAIN FINANCIAL ASSET. (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1) of this section.

(3) A securities intermediary satisfies the duty in subsection (1) of this section if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

NEW SECTION. Sec. 45. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-505, to read as follows:

DUTY OF SECURITIES INTERMEDIARY WITH RESPECT TO PAYMENTS AND DISTRIBUTIONS. (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

NEW SECTION. Sec. 46. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-506, to read as follows:

DUTY OF SECURITIES INTERMEDIARY TO EXERCISE RIGHTS AS DIRECTED BY ENTITLEMENT HOLDER. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

NEW SECTION. Sec. 47. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-507, to read as follows:

DUTY OF SECURITIES INTERMEDIARY TO COMPLY WITH ENTITLEMENT ORDER. (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

NEW SECTION. Sec. 48. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-508, to read as follows:

DUTY OF SECURITIES INTERMEDIARY TO CHANGE ENTITLEMENT HOLDER'S POSITION TO OTHER FORM OF SECURITY HOLDING. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

NEW SECTION. Sec. 49. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-509, to read as follows:

SPECIFICATION OF DUTIES OF SECURITIES INTERMEDIARY BY OTHER STATUTE OR REGULATION; MANNER OF PERFORMANCE OF DUTIES OF SECURITIES INTERMEDIARY AND EXERCISE OF RIGHTS OF ENTITLEMENT HOLDER. (1) If the substance of a duty imposed upon a securities intermediary by sections 44 through 48 of this act is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by sections 44 through 48 of this act is subject to:

(a) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(b) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) Sections 44 through 48 of this act do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

NEW SECTION. Sec. 50. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-510, to read as follows:

RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER. (1) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under section 42 of this act, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

NEW SECTION. Sec. 51. A new section is added to Title 62A RCW, to be codified as RCW 62A.8-511, to read as follows:

PRIORITY AMONG SECURITY INTERESTS AND ENTITLEMENT HOLDERS. (1) Except as otherwise provided in subsections (2) and (3) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

NEW SECTION. Sec. 52. The following acts or parts of acts are each repealed:

- (1) RCW 21.17.010 and 1961 c 150 s 1;
- (2) RCW 21.17.020 and 1961 c 150 s 2;
- (3) RCW 21.17.030 and 1961 c 150 s 3;
- (4) RCW 21.17.040 and 1961 c 150 s 4;
- (5) RCW 21.17.050 and 1961 c 150 s 5;
- (6) RCW 21.17.060 and 1961 c 150 s 6;
- (7) RCW 21.17.070 and 1961 c 150 s 7;
- (8) RCW 21.17.080 and 1967 c 208 s 1 & 1961 c 150 s 8;
- (9) RCW 21.17.090 and 1961 c 150 s 9;
- (10) RCW 21.17.900 and 1961 c 150 s 10;
- (11) RCW 21.17.910 and 1961 c 150 s 11;
- (12) RCW 62A.8-308 and 1986 c 35 s 23 & 1965 ex.s. c 157 s 8-308;
- (13) RCW 62A.8-309 and 1986 c 35 s 24 & 1965 ex.s. c 157 s 8-309;
- (14) RCW 62A.8-310 and 1986 c 35 s 25 & 1965 ex.s. c 157 s 8-310;
- (15) RCW 62A.8-311 and 1986 c 35 s 26 & 1965 ex.s. c 157 s 8-311;
- (16) RCW 62A.8-312 and 1986 c 35 s 27 & 1965 ex.s. c 157 s 8-312;
- (17) RCW 62A.8-313 and 1986 c 35 s 28 & 1965 ex.s. c 157 s 8-313;
- (18) RCW 62A.8-314 and 1986 c 35 s 29 & 1965 ex.s. c 157 s 8-314;
- (19) RCW 62A.8-315 and 1986 c 35 s 30 & 1965 ex.s. c 157 s 8-315;
- (20) RCW 62A.8-316 and 1986 c 35 s 31 & 1965 ex.s. c 157 s 8-316;
- (21) RCW 62A.8-317 and 1986 c 35 s 32 & 1965 ex.s. c 157 s 8-317;
- (22) RCW 62A.8-318 and 1986 c 35 s 33 & 1965 ex.s. c 157 s 8-318;
- (23) RCW 62A.8-319 and 1986 c 35 s 34 & 1965 ex.s. c 157 s 8-319;
- (24) RCW 62A.8-320 and 1986 c 35 s 35 & 1965 ex.s. c 157 s 8-320;

- (25) RCW 62A.8-321 and 1986 c 35 s 36; and
 (26) RCW 62A.8-408 and 1986 c 35 s 44.

PART 6

TRANSITION PROVISIONS FOR REVISED ARTICLE 8 AND CONFORMING AMENDMENTS TO ARTICLES 1, 5, 9, AND 10

NEW SECTION. **Sec. 53. SAVINGS CLAUSE.** (1) This act does not affect an action or proceeding commenced before the effective date of this act.

(2) If a security interest in a security is perfected by the effective date of this act, and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue perfection. If a security interest in a security is perfected by the effective date of this act, but the action by which the security interest was perfected would not suffice to perfect a security interest under this act, the security interest remains perfected through December 31, 1995, and continues perfected thereafter if appropriate action to perfect under this act is taken by that date. If a security interest is perfected by the effective date of this act, and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

Sec. 54. RCW 62A.1-105 and 1993 c 395 s 6-102 and 1993 c 230 s 2A-601 are each reenacted and 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.

Applicability of the Article on Investment Securities. ~~((RCW 62A.8-106))~~
Section 10 of this act.

Perfection provisions of the Article on Secured Transactions. RCW 62A.9-103.

Sec. 55. RCW 62A.1-206 and 1965 ex.s. c 157 s 1-206 are each amended to read as follows:

STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY NOT OTHERWISE COVERED. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor of securities (~~(RCW 62A.8-319)~~ section 13 of this act) nor to security agreements (RCW 62A.9-203).

Sec. 56. RCW 62A.4-104 and 1993 c 229 s 80 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, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of 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;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means 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~~) 62A.8-102), 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;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

(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;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(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.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	RCW 62A.4-110.
"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.
"Presentment notice"	RCW 62A.4-110.

(c) The following definitions in other Articles apply to this Article:

"Acceptance"	RCW 62A.3-409.
"Alteration"	RCW 62A.3-407.
"Cashier's check"	RCW 62A.3-104.
"Certificate of deposit"	RCW 62A.3-104.
"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.3-503.
"Order"	RCW 62A.3-103.
"Ordinary care"	RCW 62A.3-103.
"Person entitled to enforce"	RCW 62A.3-301.
"Presentment"	RCW 62A.3-501.
"Promise"	RCW 62A.3-103.
"Prove"	RCW 62A.3-103.
"Teller's check"	RCW 62A.3-104.
"Unauthorized signature"	RCW 62A.3-403.

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 57. RCW 62A.5-114 and 1986 c 35 s 54 are each amended to read as follows:

ISSUER'S DUTY AND PRIVILEGE TO HONOR; RIGHT TO REIMBURSEMENT. (1) An issuer must honor a draft or demand for payment which

complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (RCW 62A.7-507) or of a certificated security (RCW (~~62A.8-306~~) 62A.8-108) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (RCW 62A.3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (RCW 62A.7-502) or a bona fide purchaser of a certificated security (RCW 62A.8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(a) any payment made on receipt of such notice is conditional; and

(b) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in sub-paragraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

Sec. 58. RCW 62A.9-103 and 1986 c 35 s 45 are each amended to read as follows:

PERFECTION OF SECURITY INTEREST((S)) IN MULTIPLE STATE TRANSACTIONS. (1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of RCW 62A.9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1):

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes

unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) ~~((Uncertificated securities.~~

~~The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.))~~ Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in section 10(4) of this act.

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in section 10(5) of this act.

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) if an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) if an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i), but

expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

Sec. 59. RCW 62A.9-105 and 1986 c 35 s 46 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of Article 1 (RCW 62A.1-201), and a receipt of the kind described in subsection (2) of RCW 62A.7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (RCW 62A.9-313), but does not include money, documents, instruments, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in RCW 62A.3-104), ~~((or a certificated security (defined in RCW 62A.8-102)))~~ or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account".	RCW 62A.9-106.
"Attach".	RCW 62A.9-203.
<u>"Commodity contract".</u>	<u>Section 61 of this act.</u>
<u>"Commodity customer".</u>	<u>Section 61 of this act.</u>
<u>"Commodity intermediary".</u>	<u>Section 61 of this act.</u>
"Construction mortgage".	RCW 62A.9-313(1).
"Consumer goods".	RCW 62A.9-109(1).

<u>"Control"</u> .	<u>Section 61 of this act.</u>
"Equipment".	RCW 62A.9-109(2).
"Farm products".	RCW 62A.9-109(3).
"Fixture".	RCW 62A.9-313.
"Fixture filing".	RCW 62A.9-313.
"General intangibles".	RCW 62A.9-106.
"Inventory".	RCW 62A.9-109(4).
<u>"Investment property"</u> .	<u>Section 61 of this act.</u>
"Lien creditor".	RCW 62A.9-301(3).
"Proceeds".	RCW 62A.9-306(1).
"Purchase money security interest".	RCW 62A.9-107.
"United States".	RCW 62A.9-103.
(3) The following definitions in other Articles apply to this Article:	
<u>"Broker"</u> .	<u>RCW 62A.8-102.</u>
<u>"Certificated security"</u> .	<u>RCW 62A.8-102.</u>
"Check".	RCW 62A.3-104.
<u>"Clearing corporation"</u> .	<u>RCW 62A.8-102.</u>
"Contract for sale".	RCW 62A.2-106.
<u>"Control"</u> .	<u>RCW 62A.8-106.</u>
<u>"Delivery"</u> .	<u>RCW 62A.8-301.</u>
<u>"Entitlement holder"</u> .	<u>RCW 62A.8-102.</u>
<u>"Financial asset"</u> .	<u>RCW 62A.8-102.</u>
"Holder in due course".	RCW 62A.3-302.
"Note".	RCW 62A.3-104.
"Sale".	RCW 62A.2-106.
<u>"Securities intermediary"</u> .	<u>RCW 62A.8-102.</u>
<u>"Security"</u> .	<u>RCW 62A.8-102.</u>
<u>"Security certificate"</u> .	<u>RCW 62A.8-102.</u>
<u>"Security entitlement"</u> .	<u>RCW 62A.8-102.</u>
<u>"Uncertificated security"</u> .	<u>RCW 62A.8-102.</u>

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 60. RCW 62A.9-106 and 1981 c 41 s 10 are each amended to read as follows:

DEFINITIONS: "ACCOUNT"; "GENERAL INTANGIBLES". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

NEW SECTION. **Sec. 61.** A new section is added to Title 62A RCW, to be codified as RCW 62A.9-115, to read as follows:

INVESTMENT PROPERTY. (1) In this Article:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) "Commodity intermediary" means:

(i) a person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) a person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in RCW 62A.8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) "Investment property" means:

(i) a security, whether certificated or uncertificated;

(ii) a security entitlement;

(iii) a securities account;

(iv) a commodity contract; or

(v) a commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest

in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in paragraphs (c) and (d), conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by RCW 62A.9-312 (5), (6), and (7). RCW 62A.9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking.

NEW SECTION. **Sec. 62.** A new section is added to Title 62A RCW, to be codified as RCW 62A.9-116, to read as follows:

SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL ASSET. (1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

Sec. 63. RCW 62A.9-203 and 1986 c 35 s 47 are each amended to read as follows:

ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS((-); FORMAL REQUISITES. (1) Subject to the provisions of RCW 62A.4-208 on the security interest of a collecting bank, ~~((RCW 62A.8-321))~~ sections 61 and 62 of this act on security interests in ~~((securities))~~ investment property, and RCW 62A.9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by RCW 62A.9-306.

(4) A transaction, although subject to this Article, is also subject to chapters 31.04, (~~(31.08;)~~) 31.12, 31.16, 31.20, and 31.24 RCW, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Sec. 64. RCW 62A.9-301 and 1982 c 186 s 2 are each amended to read as follows:

PERSONS WHO TAKE PRIORITY OVER UNPERFECTED SECURITY INTERESTS; RIGHTS OF "LIEN CREDITOR". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under RCW 62A.9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts (~~(and)~~), general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within twenty days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for

benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

Sec. 65. RCW 62A.9-302 and 1987 c 189 s 1 and 1986 c 35 s 48 are each reenacted and amended to read as follows:

WHEN FILING IS REQUIRED TO PERFECT SECURITY INTEREST; SECURITY INTERESTS TO WHICH FILING PROVISIONS OF THIS ARTICLE DO NOT APPLY. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under RCW 62A.9-305;

(b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under RCW 62A.9-304 or in proceeds for a ten day period under RCW 62A.9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and other property subject to subsection (3) of this section; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in RCW 62A.9-313;

(e) a security interest of a collecting bank (RCW 62A.4-208) (~~or in securities (RCW 62A.8-321))~~) or arising under the Article on Sales (RCW 62A.9-113) or covered in subsection (3) of this section;

(f) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(g) a security interest in investment property which is perfected without filing under section 61 or 62 of this act.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or

(b) the following statute of this state: RCW 46.12.095 or 88.02.070; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this

Article (Part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of RCW 62A.9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in RCW 62A.9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

(5) Part 4 of this Article does not apply to a security interest in property of any description created by a deed of trust or mortgage made by any corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipe line, or the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected under this Article by filing such deed of trust or mortgage with the department of licensing. When so filed, such instrument shall remain effective until terminated, without the need for filing a continuation statement. Assignments and releases of such instruments may also be filed with the department of licensing. The director of licensing shall be a filing officer for the foregoing purposes.

Sec. 66. RCW 62A.9-304 and 1986 c 35 s 49 are each amended to read as follows:

PERFECTION OF SECURITY INTEREST IN INSTRUMENTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than ~~((certificated securities or))~~) instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of RCW 62A.9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments ~~((other than))~~ certified securities~~((s))~~, or negotiable documents is perfected without filing or the taking of

possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument (~~((other than))~~), a certificated security(~~(s)~~), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange but priority between conflicting security interests in the goods is subject to subsection (3) of RCW 62A.9-312; or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article.

Sec. 67. RCW 62A.9-305 and 1986 c 35 s 50 are each amended to read as follows:

WHEN POSSESSION BY SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. A security interest in letters of credit and advices of credit (subsection (2)(a) of RCW 62A.5-116), goods, instruments (~~((other than certificated securities)))~~), money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.

Sec. 68. RCW 62A.9-306 and 1981 c 41 s 19 are each amended to read as follows:

"PROCEEDS"; SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; ~~((e))~~

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds or instruments; ~~((e))~~

(c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or

(d) the security interest in the proceeds is perfected before the expiration of the ten day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under RCW 62A.9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

Sec. 69. RCW 62A.9-309 and 1986 c 35 s 51 are each amended to read as follows:

PROTECTION OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, AND SECURITIES. Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (RCW 62A.3-302) or a holder to whom a negotiable document of title has been duly negotiated (RCW 62A.7-501) or a ~~((bona fide))~~ protected purchaser of a security (RCW ~~((62A.8-302))~~ 62A.8-303) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.

Sec. 70. RCW 62A.9-312 and 1989 c 251 s 1 are each amended to read as follows:

PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN THE SAME COLLATERAL. (1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: RCW 62A.4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-103 on security interests related to other jurisdictions; RCW 62A.9-114 on consignments; section 61 of this act on security interests in investment property.

(2) Conflicting priorities between security interests in crops shall be governed by chapter 60.11 RCW.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of RCW 62A.9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under ~~((RCW 62A.8-321 on securities))~~ section 61 or 62 of this act on investment property, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

Sec. 71. RCW 62A.10-104 and 1965 ex.s. c 157 s 10-104 are each amended to read as follows:

LAWS NOT REPEALED. ~~((+))~~ The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (RCW 62A.1-201).

~~((2) This Title does not repeal chapter 150, Laws of 1961 (chapter 21.17 RCW), cited as the Uniform Act for the Simplification of Fiduciary Security Transfers, and if in any respect there is any inconsistency between that Act and the Article of this Title on investment securities (Article 8) the provisions of the former Act shall control.))~~

NEW SECTION. **Sec. 72.** 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, 1995.

Passed the Senate March 7, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 49

[Senate Bill 5351]

FAMILY DAY-CARE PROVIDERS' HOME FACILITIES—CERTIFICATION

AN ACT Relating to requirements of cities regarding certification of family day-care provider's home facilities; and amending RCW 35.63.185, 35A.63.215, and 36.70A.450.

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

Sec. I. RCW 35.63.185 and 1994 c 273 s 14 are each amended to read as follows:

No city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice which prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

A city may require that the facility: (1) Comply with all building, fire, safety, health code, and business licensing requirements; (2) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (3) is certified by the ~~((state department of licensing))~~ office of child care policy licensor as providing a safe passenger loading area; (4) include signage, if any, that conforms to applicable regulations; and (5) limit hours of operations to facilitate

neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020.

Sec. 2. RCW 35A.63.215 and 1994 c 273 s 16 are each amended to read as follows:

No city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice which prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

A city may require that the facility: (1) Comply with all building, fire, safety, health code, and business licensing requirements; (2) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (3) is certified by the (~~state department of licensing~~) office of child care policy licensor as providing a safe passenger loading area; (4) include signage, if any, that conforms to applicable regulations; and (5) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020.

Sec. 3. RCW 36.70A.450 and 1994 c 273 s 17 are each amended to read as follows:

No city that plans or elects to plan under this chapter may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice which prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

A city may require that the facility: (1) Comply with all building, fire, safety, health code, and business licensing requirements; (2) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (3) is certified by the ~~((state department of licensing))~~ office of child care policy licensor as providing a safe passenger loading area; (4) include signage, if any, that conforms to applicable regulations; and (5) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

Nothing in this section shall be construed to prohibit a city that plans or elects to plan under this chapter from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020.

Passed the Senate March 7, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 50

[Substitute Senate Bill 5367]

FAILURE TO OBEY AN OFFICER—PENALTIES

AN ACT Relating to the penalty for failing to obey an officer; amending RCW 46.61.015 and 46.61.020; and prescribing penalties.

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

Sec. I. RCW 46.61.015 and 1975 c 62 s 17 are each amended to read as follows:

No person shall wilfully fail or refuse to comply with any lawful order or direction of any duly authorized flagman or any police officer or fire fighter invested by law with authority to direct, control, or regulate traffic.

A violation of this section is a misdemeanor.

Sec. 2. RCW 46.61.020 and 1989 c 353 s 6 are each amended to read as follows:

It is unlawful for any person while operating or in charge of any vehicle to refuse when requested by a police officer to give his name and address and the name and address of the owner of such vehicle, or for such person to give a false name and address, and it is likewise unlawful for any such person to refuse or neglect to stop when signaled to stop by any police officer or to refuse upon demand of such police officer to produce his certificate of license registration of such vehicle, his insurance identification card, or his vehicle driver's license or to refuse to permit such officer to take any such license, card, or certificate for the purpose of examination thereof or to refuse to permit the examination of any equipment of such vehicle or the weighing of such vehicle or to refuse or neglect to produce the certificate of license registration of such vehicle, insurance card, or his vehicle driver's license when requested by any court. Any police officer shall on request produce evidence of his authorization as such.

A violation of this section is a misdemeanor.

Passed the Senate March 7, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 51

[Substitute Senate Bill 5463]

ALCOHOL SERVERS TRAINING

AN ACT Relating to alcohol servers training for on-premises liquor licensees; adding new sections to chapter 66.20 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 education of alcohol servers on issues such as the physiological effects of alcohol on consumers, liability and legal implications of serving alcohol, driving while intoxicated, and methods of intervention with the problem customer are important in protecting the health and safety of the public. The legislature further finds that it is in the best interest of the citizens of the state of Washington to have an alcohol server education program.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 3 through 7 of this act.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person serving or selling alcohol, spirits, wines, or beer for consumption at an on-premises retail licensed facility as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.340, 66.24.350, 66.24.400, 66.24.425, and 66.24.450.

NEW SECTION. Sec. 3. (1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective July 1, 1996, except as provided in (d) of this subsection, every person employed, under contract or otherwise, by an annual retail liquor licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.340, 66.24.350, 66.24.400, 66.24.425, or 66.24.450, who as part of his or her employment participates in any manner in the sale or service of alcoholic beverages shall have issued to them a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) No licensee described in (a) of this subsection, except as provided in (d) of this subsection, may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After July 1, 1996, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Establishments licensed under RCW 66.24.320 and 66.24.340, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine is incidental to the primary business, and employees of such establishments, are exempt from sections 2 through 7 of this act.

NEW SECTION. Sec. 4. (1) The board shall regulate a required alcohol server education program that includes:

(a) Development of the curriculum and materials for the education program;

(b) Examination and examination procedures;

(c) Certification procedures, enforcement policies, and penalties for education program instructors and providers;

(d) The curriculum for an approved class 12 alcohol permit training program that includes but is not limited to the following subjects:

(i) The physiological effects of alcohol including the effects of alcohol in combination with drugs;

(ii) Liability and legal information;

(iii) Driving while intoxicated;

(iv) Intervention with the problem customer, including ways to stop service, ways to deal with the belligerent customer, and alternative means of transportation to get the customer safely home;

(v) Methods for checking proper identification of customers;

(vi) Nationally recognized programs, such as TAM (Techniques in Alcohol Management) and TIPS (Training for Intervention Programs) modified to include Washington laws and regulations.

(2) The board shall provide the program through liquor licensee associations, independent contractors, private persons, private or public schools certified by the board, or any combination of such providers.

(3) Each training entity shall provide a class 12 permit to the manager or bartender who has successfully completed a course the board has certified. A list of the individuals receiving the class 12 permit shall be forwarded to the board on the completion of each course given by the training entity.

(4) After July 1, 1996, the board shall require all alcohol servers applying for a class 13 alcohol server permit to view a video training session. Retail liquor licensees shall fully compensate employees for the time spent participating in this training session.

(5) When requested by a retail liquor licensee, the board shall provide copies of videotaped training programs that have been produced by private vendors and make them available for a nominal fee to cover the cost of purchasing and shipment, with the fees being deposited in the liquor revolving fund for distribution to the board as needed.

(6) Each training entity may provide the board with a video program of not less than one hour that covers the subjects in subsection (1)(d) (i) through (v) of this section that will be made available to a licensee for the training of a class 13 alcohol server.

(7) Applicants shall be given a class 13 permit upon the successful completion of the program.

(8) A list of the individuals receiving the class 13 permit shall be forwarded to the board on the completion of each video training program.

(9) The board shall develop a model permit for the class 12 and 13 permits. The board may provide such permits to training entities or licensees for a nominal cost to cover production.

(10) Persons who have completed a nationally recognized alcohol management or intervention program since July 1, 1993, may be issued a class 12 or 13 permit upon providing proof of completion of such training to the board.

NEW SECTION. Sec. 5. The board shall adopt rules to implement sections 2 through 7 of this act including, but not limited to, procedures and grounds for denying, suspending, or revoking permits.

NEW SECTION. Sec. 6. A violation of any of the rules of the board adopted to implement sections 2 through 7 of this act is a misdemeanor, punishable by a fine of not more than two hundred fifty dollars for a first offense. A subsequent offense is punishable by a fine of not more than five hundred dollars, or imprisonment for not more than ninety days, or both the fine and imprisonment.

NEW SECTION. Sec. 7. Fees collected by the board under sections 2 through 7 of this act shall be deposited in the liquor revolving fund in accordance with RCW 66.08.170.

NEW SECTION. Sec. 8. Sections 2 through 7 of this act are each added to chapter 66.20 RCW.

Passed the Senate March 7, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 52

[Substitute Senate Bill 5479]

TRANSFER OF HOME-BASED STUDENTS—OPEN ENROLLMENT PROGRAM

AN ACT Relating to clarifying transfers under the public school open enrollment program; and amending RCW 28A.200.010, 28A.225.220, and 28A.225.225.

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

Sec. 1. RCW 28A.200.010 and 1993 c 336 s 1103 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 or the district that accepts the transfer, and the student shall be deemed a transfer student of the nonresident district. Parents may apply for transfer under RCW 28A.225.220;

(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).

Sec. 2. RCW 28A.225.220 and 1993 c 336 s 1008 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 or the request of a parent or guardian for his or her child to transfer as a student receiving home-based instruction.

(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 not charge transfer fees or tuition for nonresident students enrolled under subsection (3) of this section and RCW 28A.225.225. 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.

Sec. 3. RCW 28A.225.225 and 1994 c 293 s 1 are each amended to read as follows:

(1) All districts accepting applications from nonresident students or from students receiving home-based instruction for admission to the district's schools shall consider equally all applications received. Each school district shall adopt a policy establishing rational, fair, and equitable standards for acceptance and rejection of applications by June 30, 1990. The policy may include rejection of nonresident students if acceptance of these students would result in the district experiencing a financial hardship.

(2) The district shall provide to applicants written notification of the approval or denial of the application in a timely manner. If the application is rejected, the notification shall include the reason or reasons for denial and the right to appeal under RCW 28A.225.230(3).

Passed the Senate March 9, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 53

[Senate Bill 5520]

CHILD PLACEMENT—INDEPENDENT LIVING ARRANGEMENTS

AN ACT Relating to placement of children; and amending RCW 13.34.130 and 13.34.145.

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

Sec. 1. RCW 13.34.130 and 1994 c 288 s 4 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030; after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health

services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(i) There is no parent or guardian available to care for such child;

(ii) The parent, guardian, or legal custodian is not willing to take custody of the child;

(iii) A manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or

(iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds it is recommended by the supervising agency, that it is in the best interests of the child and that it is not reasonable to provide further services to reunify the family because the existence of aggravated circumstances make it unlikely that services will effectuate the return of the child to the child's parents in the near future. In determining whether aggravated circumstances exist, the court shall consider 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 and 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.

(3) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older. Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

(4) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

(5) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

- (i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;
 - (ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration has been given to placement with the child's relatives;
 - (iii) Whether there is a continuing need for placement and whether the placement is appropriate;
 - (iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;
 - (v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;
 - (vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;
 - (vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and
 - (viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.
- (c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

Sec. 2. RCW 13.34.145 and 1994 c 288 s 5 are each amended to read as follows:

(1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(a) Whenever a child is placed in out-of-home care pursuant to RCW 13.34.130, the agency that has custody of the child shall provide the court with a written permanency plan of care directed towards securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older and the provisions of subsection (2) of this section are met.

(b) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months.

(2) Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(3)(a) For children ten and under, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) For children over ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.

~~((3))~~ (4) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve or eighteen months, as provided in subsection ~~((2))~~ (3) of this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree or guardianship order is entered, or the dependency is dismissed.

~~((4))~~ (5) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

~~((5))~~ (6) At the permanency planning hearing, the court shall enter findings as required by RCW 13.34.130(5) and shall review the permanency plan prepared by the agency. If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate. In cases where the primary permanency planning goal has not yet been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. In all cases, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented;
or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

~~((6))~~ (7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.130(5), and the court shall determine the need for continued intervention.

~~((7))~~ (8) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

~~((8))~~ (9) Except as otherwise provided in RCW 13.34.235, the status of all dependent children shall continue to be reviewed by the court at least once every six months, in accordance with RCW 13.34.130(5), until the dependency is dismissed. Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

~~((9))~~ (10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

~~((10))~~ (11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights.

~~((11))~~ (12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

Passed the Senate March 9, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 54

[Substitute Senate Bill 5688]

FETAL ALCOHOL EXPOSURE PREVENTION

AN ACT Relating to fetal alcohol exposure; adding new sections to chapter 70.96A RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that fetal alcohol exposure is among the leading known causes of mental retardation in the children of our state. The legislature further finds that individuals with undiagnosed fetal alcohol exposure suffer substantially from secondary disabilities such as child abuse and neglect, separation from families, multiple foster placements, depression, aggression, school failure, juvenile detention, and job instability. These secondary disabilities come at a high cost to the individuals, their family, and society. The legislature finds that these problems can be reduced substantially by early diagnosis and receipt of appropriate, effective intervention.

The purpose of this act is to support current public and private efforts directed at the early identification of and intervention into the problems associated with fetal alcohol exposure through the creation of a fetal alcohol exposure clinical network.

NEW SECTION. Sec. 2. A new section is added to chapter 70.96A RCW to read as follows:

(1) The department shall contract with the University of Washington fetal alcohol syndrome clinic to provide fetal alcohol exposure screening and assessment services. The University indirect charges shall not exceed ten percent of the total contract amount. The contract shall require the University of Washington fetal alcohol syndrome clinic to provide the following services:

(a) Training for health care staff in community-based fetal alcohol exposure clinics to ensure the accurate diagnosis of individuals with fetal alcohol exposure and the development and implementation of appropriate service referral plans;

(b) Development of written or visual educational materials for the individuals diagnosed with fetal alcohol exposure and their families or caregivers;

(c) Systematic information retrieval from each community clinic to (i) maintain diagnostic accuracy and reliability across all community clinics, (ii) facilitate the development of effective and efficient screening tools for population-based identification of individuals with fetal alcohol exposure, (iii) facilitate identification of the most clinically efficacious and cost-effective educational, social, vocational, and health service interventions for individuals with fetal alcohol exposure;

(d) Based on available funds, establishment of a network of community-based fetal alcohol exposure clinics across the state to meet the demand for fetal alcohol exposure diagnostic and referral services; and

(e) Preparation of an annual report for submission to the department of health, the department of social and health services, the department of correc-

tions, and the office of the superintendent of public instruction which includes the information retrieved under subsection (1)(c) of this section.

(2) The department shall submit to the legislature, by January 1, 1996, a copy of the governor's fetal alcohol syndrome advisory board report.

NEW SECTION. Sec. 3. A new section is added to chapter 70.96A RCW to read as follows:

The department of social and health services, the department of health, the department of corrections, and the office of the superintendent of public instruction shall execute an interagency agreement to ensure the coordination of identification, prevention, and intervention programs for children who have fetal alcohol exposure, and for women who are at high risk of having children with fetal alcohol exposure.

The interagency agreement shall provide a process for community advocacy groups to participate in the review and development of identification, prevention, and intervention programs administered or contracted for by the agencies executing this agreement.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act referencing this act by bill number is not provided by June 30, 1995, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 13, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 55

[Senate Bill 5563]

CLASS H LIQUOR LICENSES

AN ACT Relating to class H liquor licenses issued to hotels operating conference or convention centers or having banquet facilities on property owned or through leasehold interest by the licensed hotel; and amending RCW 66.24.420.

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

Sec. 1. RCW 66.24.420 and 1981 1st ex.s. c 5 s 45 are each amended to read as follows:

(1) The class H license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for said license, if issued to a club, whether inside or outside of incorporated cities and towns, shall be seven hundred dollars.

(b) The annual fee for said license, if issued to any other class H licensee in incorporated cities and towns, shall be graduated according to the population thereof as follows:

Incorporated	
Cities and towns	Fees
Less than 20,000	\$1,200
20,000 or over	\$2,000

(c) The annual fee for said license when issued to any other class H licensee outside of incorporated cities and towns shall be: Two thousand dollars; this fee shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(d) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: PROVIDED, FURTHER, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association, or person operating dining places at publicly owned civic centers with facilities for sports, entertainment, and conventions, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a dining place at such a publicly owned civic center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and food service shall be available on request in other licensed places on the premises: PROVIDED FURTHER, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(f) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a class H licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference

or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place: PROVIDED, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: PROVIDED FURTHER, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine class H licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue class H licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of class H licenses issued in the state of Washington by the board, not including those class H licenses issued to clubs, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a class H license to any applicant if in the opinion of the board the class H licenses already granted for the particular locality are adequate for the reasonable needs of the community.

Passed the Senate March 10, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 56

[Senate Bill 5583]

UNEMPLOYMENT COMPENSATION—CONTRIBUTION RATES FOR SUCCESSOR EMPLOYERS

AN ACT Relating to unemployment insurance contribution rates for successor employers; and amending RCW 50.29.062.

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

Sec. 1. RCW 50.29.062 and 1989 c 380 s 81 are each amended to read as follows:

Predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer, ~~((his or her))~~ its contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs. From and after January 1 following the transfer, the successor's contribution rate for each rate year shall be based on ~~((his or her))~~ its experience with payrolls and benefits including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year.

(2) If the successor is not an employer at the time of the transfer, ~~((he or she))~~ it shall pay contributions at the ~~((rate class assigned to the predecessor employer at the time of the transfer for the remainder for that rate year and continuing until such time as he or she qualifies for a different rate in his or her own right))~~ lowest rate determined under either of the following:

(a) The contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year and continuing until the successor qualifies for a different rate in its own right. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor; or

(b) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must 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.

(3) If the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, ~~((his or her))~~ its rate from the date the transfer occurred until the end of that rate year and until ~~((he or she))~~ it qualifies in ~~((his or her))~~ its own right for a new rate, shall be the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition.

(4) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(5) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate for each rate year shall be based on ~~((his or her))~~ its experience with payrolls and benefits as of the regular computation date for that rate year including the experience of the acquired business or portion of business up to the date of transfer: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until ~~((he or she))~~ it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010.

Passed the Senate March 3, 1995.
Passed the House April 5, 1995.
Approved by the Governor April 17, 1995.
Filed in Office of Secretary of State April 17, 1995.

CHAPTER 57

[Senate Bill 5584]

**UNEMPLOYMENT COMPENSATION—NONCHARGING OF BENEFITS TO
EXPERIENCE RATING ACCOUNTS**

AN ACT Relating to noncharging of benefits to employers' unemployment insurance experience rating accounts; amending RCW 50.16.094, 50.22.090, and 50.29.020; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 50.16.094 and 1993 c 226 s 6 are each amended 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.

Sec. 2. RCW 50.22.090 and 1993 c 316 s 10 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 1, 1995, but for claims established on or before July 1, 1995, weeks of unemployment occurring after July 1, 1995, shall be compensated as provided in this section.

(b) The total additional benefit amount shall be 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 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 two years after March 26, 1992, for individuals who become eligible as a result of chapter 47, Laws of 1992.

(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.

(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 316, Laws of 1993 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.

Sec. 3. RCW 50.29.020 and 1993 c 483 s 19 are each amended to read as follows:

(1) An experience rating account shall be established and maintained for each employer, 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, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers 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 described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

~~(b) ((Benefits paid to an individual under the provisions of RCW 50.12.050 shall not be charged to the account of any contribution paying employer if the wage credits earned in this state by the individual during his or her base year are less than the minimum amount necessary to qualify the individual for unemployment benefits.~~

~~(e)))~~ Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

~~((c)))~~ (c) Benefits paid which represent the state's share of benefits payable under chapter 50.22 RCW shall not be charged to the experience rating account of any contribution paying employer.

~~((e))~~ (d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

~~((f))~~ (e) In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

~~((g) Benefits paid to an individual who does not successfully complete an approved on-the-job training program under RCW 50.12.240 may not be charged to the experience rating account of the contribution paying employer who provided the approved on-the-job training.))~~

(3)(a) Beginning July 1, 1985, a contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

NEW SECTION. Sec. 4. This act applies only to benefit charges attributable to new claims effective after July 1, 1995.

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 Senate March 3, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 58

[Substitute Senate Bill 5609]

AIR POLLUTION CONTROL AUTHORITIES—AGRICULTURAL BURNING PERMITS

AN ACT Relating to air pollution control authorities; and amending RCW 70.94.650.

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

Sec. 1. RCW 70.94.650 and 1994 c 28 s 2 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 training to fight structural fires as provided in RCW 52.12.150 and except forest fire training, or

(c) agricultural activities shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.654. General permit criteria of state-wide applicability 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 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. A local air authority administering the permit program under this subsection (1)(c) shall not limit the number of days of allowable agricultural burning, but may

consider the time of year, meteorological conditions, and other criteria specified in rules adopted by the department to implement this subsection (1)(c).

(2) Permit fees shall be assessed for burning under this section and shall be collected by the department of ecology, 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 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.

Passed the Senate March 10, 1995.
Passed the House April 5, 1995.
Approved by the Governor April 17, 1995.
Filed in Office of Secretary of State April 17, 1995.

CHAPTER 59

[Senate Bill 5625]

HUNTING LICENSES—USE OF MIGRATORY WATERFOWL STAMP

AN ACT Relating to hunting licenses; and adding a new section to chapter 77.32 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 77.32 RCW to read as follows:

Hunters who have a valid hunting license, and a valid migratory waterfowl stamp that may be used after December 31 of the year of issuance, are not required to purchase a new hunting license in order to use the migratory waterfowl stamp during the period in which a waterfowl hunting season exists in the month of January in the year following the issuance of the migratory waterfowl stamp and hunting license.

Passed the Senate March 10, 1995.
Passed the House April 5, 1995.
Approved by the Governor April 17, 1995.
Filed in Office of Secretary of State April 17, 1995.

CHAPTER 60

[Senate Bill 5699]

INTERNATIONAL STUDENT EXCHANGE VISITOR PLACEMENT ORGANIZATIONS

AN ACT Relating to international student exchange visitor placement organizations; and amending RCW 19.166.030 and 19.166.040.

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

Sec. 1. RCW 19.166.030 and 1991 c 128 s 3 are each amended to read as follows:

(1) All international student exchange visitor placement organizations that place students in public schools in the state shall register with the secretary of state.

(2) Failure to register is a violation of this chapter.

(3) Information provided to the secretary of state under this chapter is a public record.

(4) Registration shall not be considered or be represented as an endorsement of the organization by the secretary of state or the state of Washington.

(5) On a date established by rule by the secretary of state, the secretary of state shall provide annually to the superintendent of public instruction a list of

all currently registered international student placement organizations. The superintendent of public instruction shall distribute annually the list of all currently registered international student placement organizations to all Washington state school districts.

Sec. 2. RCW 19.166.040 and 1991 c 128 s 5 are each amended to read as follows:

(1) An application for registration as an international student exchange visitor placement organization shall be submitted in the form prescribed by the secretary of state. The application shall include:

(a) Evidence that the organization meets the standards established by the secretary of state under RCW 19.166.050;

(b) The name, address, and telephone number of the organization, its chief executive officer, and the person within the organization who has primary responsibility for supervising placements within the state;

(c) The organization's unified business identification number, if any;

(d) The organization's United States Information Agency number, if any;

(e) Evidence of council on standards for international educational travel listing, if any;

(f) Whether the organization is exempt from federal income tax; and

(g) A list of the organization's placements in Washington for the previous academic year including the number of students placed, their home countries, the school districts in which they were placed, and the length of their placements.

(2) The application shall be signed by the chief executive officer of the organization and the person within the organization who has primary responsibility for supervising placements within Washington. If the secretary of state determines that the application is complete, the secretary of state shall file the application and the applicant is registered.

(3) International student exchange visitor placement organizations that have registered shall inform the secretary of state of any changes in the information required under subsection (1) of this section within thirty days of the change.

(4) Registration ~~((under this chapter is valid for one year. The registration may be renewed annually))~~ shall be renewed annually as established by rule by the office of the secretary of state.

Passed the Senate March 10, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 61

[Substitute Senate Bill 5997]

FIREWORKS REGULATION

AN ACT Relating to fireworks, creating new state fireworks regulations, strengthening state fireworks enforcement provisions, requiring all sales to comply with state regulation; amending RCW 70.77.124, 70.77.126, 70.77.131, 70.77.136, 70.77.146, 70.77.180, 70.77.200, 70.77.205, 70.77.250, 70.77.255, 70.77.270, 70.77.280, 70.77.285, 70.77.311, 70.77.315, 70.77.343, 70.77.345, 70.77.375, 70.77.395, 70.77.435, 70.77.440, 70.77.455, and 70.77.555; adding new sections to chapter 70.77 RCW; adding a new section to chapter 42.17 RCW; repealing RCW 70.77.465; prescribing penalties; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature declares that fireworks, when purchased and used in compliance with the laws of the state of Washington, are legal. The legislature intends that this chapter is regulatory only, and not prohibitory.

Sec. 2. RCW 70.77.124 and 1994 c 133 s 2 are each amended to read as follows:

"City" means any incorporated city or town.

Sec. 3. RCW 70.77.126 and 1984 c 249 s 1 are each amended to read as follows:

"Fireworks" means any composition or device, in a finished state, containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and classified as common or special fireworks by the United States bureau of explosives or contained in the regulations of the United States department of transportation and designated as U.N. 0335 1.3G or U.N. 0336 1.4G as of the effective date of this act.

Sec. 4. RCW 70.77.131 and 1984 c 249 s 2 are each amended to read as follows:

"Special fireworks" means any fireworks designed primarily for exhibition display by producing visible or audible effects ~~((The term includes (1) fireworks commonly known as skyrockets, missile type rockets, firecrackers, salutes, and chasers; and (2) fireworks not classified as common fireworks))~~ and classified as such by the United States bureau of explosives or in the regulations of the United States department of transportation and designated as U.N. 0335 1.3G as of the effective date of this act.

Sec. 5. RCW 70.77.136 and 1984 c 249 s 3 are each amended to read as follows:

"Common fireworks" means any fireworks which are designed primarily ((to)) for retail sale to the public during prescribed dates and which produce visual or audible effects ((by)) through combustion and are classified as common fireworks by the United States bureau of explosives or in the regulations of the United States department of transportation and designated as U.N. 0336 1.4G as of the effective date of this act.

~~((1) The term includes:~~

~~(a) Ground and hand-held sparkling devices, including items commonly known as dipped sticks, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flitter sparklers;~~

~~(b) Smoke devices;~~

~~(c) Fireworks commonly known as helicopters, aerials, spinners, roman candles, mines, and shells;~~

~~(d) Class C explosives classified on January 1, 1984, as common fireworks by the United States department of transportation;~~

~~(2) The term does not include fireworks commonly known as firecrackers, salutes, chasers, skyrockets, and missile-type rockets.))~~

NEW SECTION. Sec. 6. (1) "New fireworks item" means any fireworks initially classified or reclassified as special or common fireworks by the United States bureau of explosives or in the regulations of the United States department of transportation after the effective date of this act.

(2) The director of community, trade, and economic development through the director of fire protection shall classify any new fireworks item in the same manner as the item is classified by the United States bureau of explosives or in the regulations of the United States department of transportation, unless the director of community, trade, and economic development through the director of fire protection determines, stating reasonable grounds, that the item should not be so classified.

NEW SECTION. Sec. 7. No fireworks may be sold or offered for sale to the public as common fireworks which are classified as sky rockets, or missile-type rockets, firecrackers, salutes, or chasers as defined by the United States department of transportation and the federal consumer products safety commission except as provided in RCW 70.77.311.

Sec. 8. RCW 70.77.146 and 1994 c 133 s 1 are each amended to read as follows:

"Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio ((~~or~~)), television ((~~production~~)), theatrical, or opera production, or live entertainment.

Sec. 9. RCW 70.77.180 and 1984 c 249 s 5 are each amended to read as follows:

"Permit" means the official permission granted by a local public agency for the purpose of establishing and maintaining a place within the jurisdiction of the local agency where fireworks are manufactured, constructed, produced, packaged, stored, sold, ((~~exchanged, discharged or used~~)) or exchanged and the official permission granted by a local agency for a public display of fireworks.

Sec. 10. RCW 70.77.200 and 1961 c 228 s 17 are each amended to read as follows:

"Importer" includes any person who for any purpose other than personal use:

- (1) Brings fireworks into this state or causes fireworks to be brought into this state;
- (2) Procures the delivery or receives shipments of any fireworks into this state; or
- (3) Buys or contracts to buy fireworks for shipment into this state.

Sec. 11. RCW 70.77.205 and 1961 c 228 s 18 are each amended to read as follows:

"Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks or persons who assemble common fireworks items or sets or packages containing common fireworks items.

Sec. 12. RCW 70.77.250 and 1986 c 266 s 100 are each amended to read as follows:

(1) The director of community, trade, and economic development, through the director of fire protection, shall enforce and administer this chapter.

(2) The director of community, trade, and economic development, through the director of fire protection, shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter.

(3) The director of community, trade, and economic development, through the director of fire protection, may prescribe such rules relating to fireworks as may be necessary for ~~((the protection of life and property and for))~~ the implementation of this chapter.

(4) The director of community, trade, and economic development, through the director of fire protection, shall prescribe such rules as may be necessary to ensure state-wide minimum standards for the enforcement of this chapter. Counties, cities, and towns shall comply with such state rules. Any local rules adopted by local authorities that are more restrictive than state law ~~((as to the types of fireworks that may be sold))~~ shall have an effective date no sooner than one year after their adoption.

(5) The director of community, trade, and economic development, through the director of fire protection, may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency or local government.

Sec. 13. RCW 70.77.255 and 1994 c 133 s 4 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, no person, without an appropriate state license or permit may:

(a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;

(b) Make a public display of fireworks; or

(c) Transport fireworks, except as a public carrier delivering to a licensee.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section or as provided in RCW 70.77.311, no person may discharge special fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of common fireworks lawfully purchased at retail.

Sec. 14. RCW 70.77.270 and 1994 c 133 s 6 are each amended to read as follows:

(1) The governing body of a city or county (~~may~~) shall grant (~~or deny~~) an application for a permit under RCW 70.77.260(1)(~~—The governing body may place reasonable conditions on any permit it issues~~) if the application meets the standards under this chapter, and the ordinances of the city or county.

(2) The director of community, trade, and economic development through the director of fire protection shall prescribe uniform, state-wide standards for retail fireworks stands. All cities and counties which allow retail fireworks sales shall comply with these standards.

(3) No retail fireworks permit may be issued to any applicant unless the retail fireworks stand is covered by a liability insurance policy with coverage of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not readily available from at least three approved insurance companies. If insurance in this amount is not offered, each fireworks permit shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

No wholesaler may knowingly sell or supply fireworks to any retail fireworks stand unless the wholesaler determines that the retail fireworks stand is covered by liability insurance in the same amount as provided in this subsection.

Sec. 15. RCW 70.77.280 and 1994 c 133 s 7 are each amended to read as follows:

The local fire official receiving an application for a permit under RCW 70.77.260(2) for a public display of fireworks shall investigate whether the character and location of the display as proposed would be hazardous to property or dangerous to any person. Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. The governing body (~~may~~) shall grant (~~or deny~~) the application (~~and may place~~

reasonable conditions on any permit it issues)) if it meets the requirements of this chapter and the ordinance of the city or county.

Sec. 16. RCW 70.77.285 and 1984 c 249 s 15 are each amended to read as follows:

Except as provided in RCW 70.77.355, the applicant for a permit under RCW 70.77.260(2) for a public display of fireworks shall include with the application evidence of a bond issued by an authorized surety company. The bond shall be in the amount required by RCW 70.77.295 and shall be conditioned upon the applicant's payment of all damages to persons or property resulting from or caused by such public display of fireworks, or any negligence on the part of the applicant or its agents, servants, employees, or subcontractors in the presentation of the display. Instead of a bond, the applicant may include a certificate of insurance evidencing the carrying of appropriate ~~((public))~~ liability insurance in the amount required by RCW 70.77.295 for the benefit of the person named therein as assured, as evidence of ability to respond in damages. The local fire official receiving the application shall approve the bond or insurance if it meets the requirements of this section.

Sec. 17. RCW 70.77.311 and 1984 c 249 s 19 are each amended to read as follows:

(1) No license is required for the purchase of agricultural and wildlife fireworks by government agencies if:

(a) The agricultural and wildlife fireworks are used for wildlife control or are distributed to farmers, ranchers, or growers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency;

(b) The distribution is in response to a written application describing the wildlife management problem that requires use of the devices;

(c) It is of no greater quantity than necessary to control the described problem; and

(d) It is limited to situations where other means of control are unavailable or inadequate.

(2) No license is required for religious organizations or private organizations or persons to purchase or use common fireworks and such audible ground devices as firecrackers, salutes, and chasers if:

(a) Purchased from a licensed manufacturer, importer, or wholesaler;

(b) For use on prescribed dates and locations;

(c) For religious or specific purposes; and

(d) A permit is obtained from the local fire official. No fee may be charged for this permit.

Sec. 18. RCW 70.77.315 and 1986 c 266 s 102 are each amended to read as follows:

Any person who desires to engage in the manufacture, importation, sale, or use of fireworks, except use as provided in RCW 70.77.255(4) and 70.77.311,

shall make a written application to the director of community, trade, and economic development, through the director of fire protection, on forms provided by him or her. Such application shall be accompanied by the annual license fee as prescribed in this chapter.

Sec. 19. RCW 70.77.343 and 1991 c 135 s 6 are each amended to read as follows:

~~((1))~~ (1) License fees, in addition to the fees in RCW 70.77.340, shall be charged as follows:

Manufacturer	\$ 1,500.00
Importer	900.00
Wholesaler	1,000.00
Retailer (for each separate outlet)	30.00
Public display for special fireworks	40.00
Pyrotechnic operator for special fireworks	5.00

(2) All receipts from the license fees in this section shall be placed in the fire services trust fund and at least seventy-five percent of these receipts shall be used to fund a state-wide public education campaign developed by the department and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks and the remaining receipts shall be used to fund state-wide enforcement efforts against the sale and use of fireworks that are illegal under this chapter.

Sec. 20. RCW 70.77.345 and 1991 c 135 s 5 are each amended to read as follows:

~~((The))~~ Every license ((fees)) issued shall be for the calendar year from January 1st to December 31st or for the remaining portion thereof of the calendar year for which the license application is made.

Sec. 21. RCW 70.77.375 and 1986 c 266 s 108 are each amended to read as follows:

The director of community, trade, and economic development, through the director of fire protection, upon reasonable opportunity to be heard, ~~((shall))~~ may revoke any license issued pursuant to this chapter, if he or she finds that:

- (1) The licensee has violated any provisions of this chapter or any rule or regulations made by the director of community, trade, and economic development, through the director of fire protection, under and with the authority of this chapter;
- (2) The licensee has created or caused a fire nuisance;
- (3) Any licensee has failed or refused to file any required reports; or
- (4) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the director of community, trade, and economic development, through the director of fire protection, in refusing originally to issue such license.

Sec. 22. RCW 70.77.395 and 1984 c 249 s 24 are each amended to read as follows:

~~((Except as provided in RCW 70.77.311, no))~~ It is legal to sell, purchase, use, and discharge common fireworks ((shall be sold or discharged)) within this state ((except)) from twelve o'clock noon on the twenty-eighth of June to twelve o'clock noon on the sixth of July of each year and as provided in RCW 70.77.311. However, no common fireworks may be sold or discharged between the hours of eleven o'clock p.m. and nine o'clock a.m., except on July 4th from nine o'clock a.m. through twelve o'clock midnight, and except from six o'clock p.m. on December 31st until one o'clock a.m. on January 1st of the subsequent year: PROVIDED, That a city or county may prohibit the sale or discharge of common fireworks on December 31, 1995, by enacting an ordinance prohibiting such sale or discharge within sixty days of the effective date of this act.

Sec. 23. RCW 70.77.435 and 1994 c 133 s 11 are each amended to read as follows:

Any fireworks which are illegally sold, offered for sale, used, discharged, possessed or transported in violation of the provisions of this chapter or the rules or regulations of the director of community, trade, and economic development, through the director of fire protection, shall be subject to seizure by the director of community, trade, and economic development, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority. Any fireworks seized ~~((under this section))~~ by legal process anywhere in the state may be disposed of by the director of community, trade, and economic development, through the director of fire protection, or the agency conducting the seizure, by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under the provisions of RCW 70.77.440, whichever is later.

Sec. 24. RCW 70.77.440 and 1994 c 133 s 12 are each amended to read as follows:

~~(1) ((Any person whose fireworks are seized under the provisions of RCW 70.77.435 may within ten days after such seizure petition the agency conducting the seizure to return the fireworks seized upon the ground that such fireworks were illegally or erroneously seized. Any petition filed hereunder shall be considered by the authority conducting the seizure within fifteen days after filing and an oral hearing granted the petitioner, if requested. Hearings shall be conducted in accordance with state law or chapter 34.05 RCW. Notice of the decision of the authority conducting the hearing shall be served upon the petitioner. The authority conducting the hearing may order the fireworks seized under this chapter disposed of or returned to the petitioner if illegally or erroneously seized. The determination of the authority conducting the hearing is final unless within sixty days an action is commenced in a court of competent~~

jurisdiction in the state of Washington for the recovery of the fireworks seized under this chapter.

~~(2) If the fireworks are not returned to the petitioner or destroyed pursuant to RCW 70.77.435, the director of community, trade, and economic development, through the director of fire protection, or the agency conducting the seizure may sell confiscated common fireworks, special fireworks, and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the director of community, trade, and economic development, through the director of fire protection.))~~ In the event of seizure under RCW 70.77.435, proceedings for forfeiture shall be deemed commenced by the seizure. The director of community, trade, and economic development or deputy director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the fireworks seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice 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.

(2) If no person notifies the director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or right to lawful possession of seized fireworks within thirty days of the seizure, the seized fireworks shall be deemed forfeited.

(3) If any person notifies the director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or possession of the fireworks within thirty days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before 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 if the aggregate value of the seized fireworks is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. 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. The burden of producing evidence shall be upon the person claiming to have the lawful right to possession of the seized fireworks. The director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, shall promptly return the

fireworks to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession of the fireworks.

(4) When fireworks are forfeited under this chapter the director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, may:

(a) Dispose of the fireworks by summary destruction; or

(h) Sell the forfeited fireworks and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the director of community, trade, and economic development, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section (~~shall be deposited in the general fund. Fireworks that are not legal for use and possession in this state shall be destroyed by the director of community, trade, and economic development, through the director of fire protection, or by the agency conducting the seizure~~) may be retained by the agency conducting the seizure and used to offset the costs of seizure and/or storage costs of the seized fireworks. The remaining proceeds, if any, shall be deposited in the fire services trust fund and shall be used for the same purposes and in the same percentages as specified in RCW 70.77.343.

Sec. 25. RCW 70.77.455 and 1986 c 266 s 114 are each amended to read as follows:

(1) All licensees shall maintain and make available to the director of community, trade, and economic development, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, and sales (~~and consumption~~) of fireworks items by (~~kind and~~) class.

(2) All records obtained and all reports produced, as required by this chapter, are not subject to disclosure through the public disclosure act under chapter 42.17 RCW.

Sec. 26. RCW 70.77.555 and 1982 c 230 s 44 are each amended to read as follows:

A local public agency may provide by ordinance for a (~~permit~~) fee in an amount sufficient to cover all legitimate (~~administrative~~) costs for (~~permit~~) all needed permits and local licenses from application to and through processing, issuance, and inspection, but in no case to exceed one hundred dollars for any one year.

NEW SECTION. **Sec. 27.** (1) Every wholesaler shall carry liability insurance for each wholesale and retail fireworks outlet it operates in the amount of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less

than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not available from at least three approved insurance companies. If insurance in this amount is not offered, each wholesale and retail outlet shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

(2) No wholesaler may knowingly sell or supply fireworks to any retail outlet unless the wholesaler determines that the retail outlet carries liability insurance in the same amount as provided in subsection (1) of this section.

NEW SECTION. Sec. 28. Retail fireworks licensees shall purchase all fireworks from wholesalers possessing a valid wholesale license issued by the state of Washington.

NEW SECTION. Sec. 29. Sections 1, 6, 7, 27, and 28 of this act are each added to chapter 70.77 RCW.

NEW SECTION. Sec. 30. A new section is added to chapter 42.17 RCW to read as follows:

All records obtained and all reports produced, as required under chapter 70.77 RCW, are not subject to the disclosure requirements under this chapter.

NEW SECTION. Sec. 31. RCW 70.77.465 and 1986 c 266 s 116 & 1961 c 228 s 70 are each repealed.

NEW SECTION. Sec. 32. 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. 33. 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 9, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 62

[House Bill 1086]

PERSONAL PROPERTY LIENS AND SECURITY INTERESTS

AN ACT Relating to personal property liens and security interests; amending RCW 61.12.162, 19.32.170, 60.08.040, 60.10.020, 60.10.040, 60.10.050, 60.34.040, 60.36.020, 60.36.050, 60.52.040, 60.72.040, 61.16.010, 61.16.020, and 61.16.030; adding new sections to chapter 60.10 RCW; recodifying RCW 61.12.162; decodifying RCW 61.12.164 and 61.12.165; and repealing RCW 61.16.060.

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

Sec. 1. RCW 61.12.162 and 1969 c 82 s 1 are each amended to read as follows:

The provisions of chapter 61.12 RCW, (~~as now or hereafter amended,~~) so far as (~~the same shall be~~) they are applicable, (~~shall~~) govern in actions for the judicial foreclosure of liens on personal property excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code, Title 62A RCW. The lien holder may proceed (~~upon his~~) on the lien; and if there (~~be~~) is a separate obligation (~~in writing to pay the same,~~) secured by (~~said~~) the lien, (~~he~~) the lienholder may bring suit (~~upon such separate promise. When he~~) on the obligation. If the lienor proceeds on the (~~promise, if there be a specific agreement therein contained, for the payment of a certain sum, or there is a separate obligation for the said sum~~) obligation, the court shall, in addition to (~~a decree of sale of lien property~~) entering a decree foreclosing the lien, render judgment (~~shall be rendered~~) for the amount due (~~upon said promise or other instrument, the payment of which is thereby secured;~~) on the obligation. The decree shall direct the sale of the lien property, and if there is a judgment on an obligation and the proceeds of (~~said~~) the sale (~~be~~) are insufficient (~~under the execution~~) to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy (~~upon~~) on and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied.

Redemption rights and the rights and interest of a purchaser for value under this section are governed by RCW 60.10.040 and 60.10.050.

NEW SECTION. Sec. 2. A new section is added to chapter 60.10 RCW to read as follows:

The provisions of chapter 61.12 RCW, so far as they are applicable, shall also be available to a secured party seeking to enforce a security interest by judicial proceedings as authorized by RCW 62A.9-501(1). In such a proceeding, the court shall enter a judgment foreclosing the security interest and shall render judgment for the amount due on the secured obligation. The decree shall direct the sale of property that is subject to the foreclosed security interest and is within the court's jurisdiction, and if the proceeds of sale are insufficient to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy on other property of the judgment debtor, not exempt from execution, for the sum remaining unsatisfied.

The rights and interest of a purchaser for value are governed by RCW 60.10.040 except as otherwise provided in Title 62A RCW.

Sec. 3. RCW 19.32.170 and 1969 c 82 s 10 are each amended to read as follows:

Every operator of a locker shall have a lien upon all the property of every kind in his possession for all lockers' rentals, processing, handling or other charges due. Such lien may be foreclosed under the procedures as provided in chapter 60.10 RCW (~~and RCW 61.12.162~~).

(1) Locker owners and operators shall not be responsible for liability for violations of game or other laws by renters unless the contents of the locker are under the control of the locker plant operator.

Sec. 4. RCW 60.08.040 and 1969 c 82 s 11 are each amended to read as follows:

The lien herein provided for may be enforced against all persons having a junior or subsequent interest in any such chattel, by judicial procedure or by summary procedure as set forth in chapter 60.10 RCW (~~and RCW 61.12.162~~) within nine months after the filing of such lien notice, and if no such action shall be commenced within such time such lien shall cease.

Sec. 5. RCW 60.10.020 and 1991 c 33 s 3 are each amended to read as follows:

Any lien upon personal property, excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code (Title 62A RCW), may be foreclosed by: (1) An action in the district court having jurisdiction in the district in which the property is situated in accordance with RCW (~~61.12.162~~) 60.10.— (RCW 61.12.162 as recodified by this act), if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW (~~61.12.162~~) 60.10.— (RCW 61.12.162 as recodified by this act), if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in this chapter.

Sec. 6. RCW 60.10.040 and 1969 c 82 s 5 are each amended to read as follows:

When a lien is foreclosed in accordance with the provisions of (~~RCW 61.12.162 and~~) this chapter, the disposition transfers to a purchaser for value all of the lien debtor's rights therein, discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the lien holder fails to comply with the requirements of this chapter (~~or of any judicial proceedings under RCW 61.12.162~~):

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the lien holder, other bidders or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith.

Sec. 7. RCW 60.10.050 and 1969 c 82 s 6 are each amended to read as follows:

At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under (~~RCW 61.12.162 and~~) this chapter, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations to the holder that are secured by the collateral as well as the expenses reasonably incurred by the lien holder(✓) in holding and preparing the collateral for disposition, in arranging for the sale, and (~~his~~) for reasonable attorneys' fees and legal expenses.

Sec. 8. RCW 60.34.040 and 1969 c 82 s 12 are each amended to read as follows:

The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed, when said lien is upon real property, or in the same manner as provided in chapter 60.10 RCW (~~and RCW 61.12.162~~) when the lien is upon personal property. The court may allow as part of the costs of the action the money paid for filing or recording the claim and a reasonable attorney fee.

Sec. 9. RCW 60.36.020 and 1969 c 82 s 19 are each amended to read as follows:

Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided in RCW (~~61.12.162~~) 60.10.— (RCW 61.12.162 as recodified by this act).

Sec. 10. RCW 60.36.050 and 1969 c 82 s 13 are each amended to read as follows:

The liens hereby created may be foreclosed as provided in RCW (~~61.12.162~~) 60.10.— (RCW 61.12.162 as recodified by this act).

Sec. 11. RCW 60.52.040 and 1969 c 82 s 14 are each amended to read as follows:

Liens under this chapter may be foreclosed as provided in chapter 60.10 RCW (~~and RCW 61.12.162~~).

Sec. 12. RCW 60.72.040 and 1969 c 82 s 15 are each amended to read as follows:

Said lien may be foreclosed as provided in chapter 60.10 RCW (~~and RCW 61.12.162~~).

Sec. 13. RCW 61.16.010 and 1897 c 23 s 1 are each amended to read as follows:

Any person to whom any real estate (~~or chattel~~) mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, (~~by him~~) signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record.

Sec. 14. RCW 61.16.020 and 1985 c 44 s 13 are each amended to read as follows:

Whenever the amount due on any mortgage is paid, the mortgagee(~~his~~) or the mortgagee's legal representatives or assigns(~~s~~) shall, at the request of any person interested in the property mortgaged, execute an instrument in writing

referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction.

Sec. 15. RCW 61.16.030 and 1984 c 14 s 1 are each amended to read as follows:

If the mortgagee fails to acknowledge satisfaction of the mortgage as provided in RCW 61.16.020 sixty days from the date of such request or demand, ~~((he))~~ the mortgagee shall forfeit and pay to the mortgagor damages and a reasonable attorneys' fee, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to cancel said mortgage, and the auditor shall immediately record the order and cancel the mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded.

NEW SECTION. **Sec. 16.** RCW 61.16.060 and 1937 c 133 s 2 are each repealed.

NEW SECTION. **Sec. 17.** RCW 61.12.164 and 61.12.165 are each decodified.

NEW SECTION. **Sec. 18.** RCW 61.12.162 is recodified in chapter 60.10 RCW to follow RCW 60.10.020.

Passed the House February 17, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 63

[House Bill 1157]

SALES AND USE TAX EXEMPTIONS—MOTOR VEHICLES USED TO TRANSPORT PERSONS AND PROPERTY FOR HIRE

AN ACT Relating to sales and use tax exemptions for motor vehicles and trailers to be used for the purpose of transporting persons or property for hire; amending RCW 82.08.0263 and 82.12.0254; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 82.08.0263 and 1980 c 37 s 30 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce whether such use is by the owner or whether such motor vehicles and trailers are leased to the user with or without drivers: PROVIDED, That the purchaser or user must be the holder of a carrier permit issued by the Interstate Commerce Commission (~~and that the vehicles will first move upon the highways of this state from the point of delivery in this state to a point outside of this state under the authority of a one-transit permit issued by the director of licensing pursuant to the provisions of RCW 46.16.160~~)).

Sec. 2. RCW 82.12.0254 and 1980 c 37 s 54 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of any airplane, locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and in respect to use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or watercraft, and in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such rules as the department of revenue shall adopt: PROVIDED, That under circumstances determined to be justifiable by the department of revenue a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein, shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state; and in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state (~~if the first use of which within this state is actual use in conducting interstate or foreign commerce~~)); and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the

point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder.

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, 1995.

Passed the House March 8, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 64

[House Bill 1360]

OSTEOPATHIC PHYSICIANS AND SURGEONS—DISCRIMINATION PROHIBITED

AN ACT Relating to discriminatory practices against doctors of osteopathic medicine and surgery licensed under chapter 18.57 RCW; adding a new section to chapter 48.46 RCW; adding a new section to chapter 18.100 RCW; and adding a new section to chapter 70.41 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.46 RCW to read as follows:

A health maintenance organization that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the health maintenance organization, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board.

NEW SECTION. Sec. 2. A new section is added to chapter 18.100 RCW to read as follows:

A professional service corporation that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the professional service corporation, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board.

NEW SECTION. Sec. 3. A new section is added to chapter 70.41 RCW to read as follows:

A hospital that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the hospital, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board.

Passed the House February 22, 1995.

Passed the Senate April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 65

[Substitute House Bill 1427]

EMERGENCY MEDICAL TECHNICIAN LICENSING REVISIONS

AN ACT Relating to emergency medical service professionals; and amending RCW 18.71.030, 18.71.200, 18.71.205, and 18.71.210.

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

Sec. 1. RCW 18.71.030 and 1994 sp.s. c 9 s 306 are each amended to read as follows:

Nothing in this chapter shall be construed to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer; nor shall anything in this chapter be construed to prohibit:

(1) The furnishing of medical assistance in cases of emergency requiring immediate attention;

(2) The domestic administration of family remedies;

(3) The administration of oral medication of any nature to students by public school district employees or private elementary or secondary school employees as provided for in chapter 28A.210 RCW;

(4) The practice of dentistry, osteopathy, osteopathy and surgery, nursing, chiropractic, podiatric medicine and surgery, optometry, naturopathy, or any other healing art licensed under the methods or means permitted by such license;

(5) The practice of medicine in this state by any commissioned medical officer serving in the armed forces of the United States or public health service or any medical officer on duty with the United States veterans administration while such medical officer is engaged in the performance of the duties prescribed for him or her by the laws and regulations of the United States;

(6) The practice of medicine by any practitioner licensed by another state or territory in which he or she resides, provided that such practitioner shall not open an office or appoint a place of meeting patients or receiving calls within this state;

(7) The practice of medicine by a person who is a regular student in a school of medicine approved and accredited by the commission, however, the performance of such services be only pursuant to a regular course of instruction

or assignments from his or her instructor, or that such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(8) The practice of medicine by a person serving a period of postgraduate medical training in a program of clinical medical training sponsored by a college or university in this state or by a hospital accredited in this state, however, the performance of such services shall be only pursuant to his or her duties as a trainee;

(9) The practice of medicine by a person who is regularly enrolled in a physician assistant program approved by the commission, however, the performance of such services shall be only pursuant to a regular course of instruction in said program and such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(10) The practice of medicine by a licensed physician assistant which practice is performed under the supervision and control of a physician licensed pursuant to this chapter;

(11) The practice of medicine, in any part of this state which shares a common border with Canada and which is surrounded on three sides by water, by a physician licensed to practice medicine and surgery in Canada or any province or territory thereof;

(12) The administration of nondental anesthesia by a dentist who has completed a residency in anesthesiology at a school of medicine approved by the commission, however, a dentist allowed to administer nondental anesthesia shall do so only under authorization of the patient's attending surgeon, obstetrician, or psychiatrist, and the commission has jurisdiction to discipline a dentist practicing under this exemption and enjoin or suspend such dentist from the practice of nondental anesthesia according to this chapter and chapter 18.130 RCW;

(13) Emergency lifesaving service rendered by a physician's trained (~~mobile intravenous therapy technician, by a physician's trained mobile airway management technician, or by a physician's trained mobile intensive care paramedic~~) emergency medical service intermediate life support technician and paramedic, as defined in RCW 18.71.200, if the emergency lifesaving service is rendered under the responsible supervision and control of a licensed physician;

(14) The provision of clean, intermittent bladder catheterization for students by public school district employees or private school employees as provided for in RCW 18.79.290 and 28A.210.280.

Sec. 2. RCW 18.71.200 and 1991 c 3 s 165 are each amended to read as follows:

~~((1))~~ As used in this chapter, a "physician's trained (~~mobile intravenous therapy~~) emergency medical service intermediate life support technician and paramedic" means a person who:

~~((a))~~ (1) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

~~((b))~~ (2) Is trained under the supervision of an approved medical program director ~~((to administer intravenous solutions))~~ according to training standards prescribed in rule to perform specific phases of advanced cardiac and trauma life support under written or oral authorization of an approved licensed physician; and

~~((e))~~ (3) Has been examined and certified as a physician's trained ~~((mobile intravenous therapy))~~ emergency medical service intermediate life support technician and paramedic, by level, by the University of Washington's school of medicine or the department of health;

(2) As used in this chapter, a "physician's trained mobile airway management technician" means a person who:

(a) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

(b) Is trained under the supervision of an approved medical program director to perform endotracheal airway management and other authorized aids to ventilation under written or oral authorization of an approved licensed physician; and

(c) Has been examined and certified as a physician's trained mobile airway management technician by the University of Washington's school of medicine or the department of health; and

(3) As used in this chapter, a "physician's trained mobile intensive care paramedic" means a person who:

(a) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

(b) Is trained under the supervision of an approved medical program director:

(i) To carry out all phases of advanced cardiac life support;

(ii) To administer drugs under written or oral authorization of an approved licensed physician; and

(iii) To administer intravenous solutions under written or oral authorization of an approved licensed physician; and

(iv) To perform endotracheal airway management and other authorized aids to ventilation; and

(c) Has been examined and certified as a physician's trained mobile intensive care paramedic by the University of Washington's school of medicine or by the department of health).

Sec. 3. RCW 18.71.205 and 1994 sp.s. c 9 s 316 are each amended to read as follows:

(1) The secretary of the department of health, in conjunction with the advice and assistance of the emergency medical services licensing and certification advisory committee as prescribed in RCW 18.73.050, and the commission, shall prescribe:

(a) Practice parameters, training standards for, and levels of, physician trained emergency medical service intermediate life support technicians and paramedics;

(b) Minimum standards and performance requirements for the certification and recertification of physician's trained ((intravenous therapy technicians, airway management technicians, and mobile intensive care paramedics)) emergency medical service intermediate life support technicians and paramedics;
and

~~((b))~~ (c) Procedures for certification, recertification, and decertification of physician's trained ((intravenous therapy technicians, airway management technicians, and mobile intensive care paramedics)) emergency medical service intermediate life support technicians and paramedics,

(2) Initial certification shall be for a period of three years.

(3) Recertification shall be granted upon proof of continuing satisfactory performance and education, and shall be for a period of three years.

(4) As used in chapters 18.71 and 18.73 RCW, "approved medical program director" means a person who:

(a) Is licensed to practice medicine and surgery pursuant to chapter 18.71 RCW or osteopathy and surgery pursuant to chapter 18.57 RCW; and

(b) Is qualified and knowledgeable in the administration and management of emergency care and services; and

(c) Is so certified by the department of health for a county, group of counties, or cities with populations over four hundred thousand in coordination with the recommendations of the local medical community and local emergency medical services and trauma care council.

(5) The Uniform Disciplinary Act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the disciplining of certificate holders under this section. The secretary shall be the disciplining authority under this section. Disciplinary action shall be initiated against a person credentialed under this chapter in a manner consistent with the responsibilities and duties of the medical program director under whom such person is responsible.

(6) Such activities of physician trained emergency medical service intermediate life support technicians and paramedics shall be limited to actions taken under the express written or oral order of medical program directors and shall not be construed at any time to include free standing or nondirected actions, for actions not presenting an emergency or life-threatening condition.

Sec. 4. RCW 18.71.210 and 1989 c 260 s 4 are each amended to read as follows:

No act or omission of any physician's trained ~~((mobile intensive care paramedic, intravenous therapy))~~ emergency medical service intermediate life support technician and paramedic, ((or airway management technician,)) as defined in RCW 18.71.200 ~~((as now or hereafter amended)),~~ any emergency medical technician or first responder as defined in RCW 18.73.030, done or omitted in good faith while rendering emergency medical service under the

responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:

(1) The ~~physician's trained ((mobile intensive care paramedic, intravenous therapy technician, airway management technician,))~~ emergency medical service intermediate life support technician and paramedic, emergency medical technician, or first responder;

(2) The medical program director;

(3) The supervising physician(s);

(4) Any hospital, the officers, members of the staff, nurses, or other employees of a hospital;

(5) Any training agency or training physician(s);

(6) Any licensed ambulance service; or

(7) Any federal, state, county, city or other local governmental unit or employees of such a governmental unit.

This section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained (~~mobile intensive care paramedic, intravenous therapy technician, airway management~~) emergency medical service intermediate life support technician and paramedic, emergency medical technician, or first responder, as the case may be.

This section shall not relieve a physician or a hospital of any duty otherwise imposed by law upon such physician or hospital for the designation or training of a physician's trained (~~mobile intensive care paramedic, intravenous therapy technician, airway management~~) emergency medical service intermediate life support technician and paramedic, emergency medical technician, or first responder, nor shall this section relieve any individual or other entity listed in this section of any duty otherwise imposed by law for the provision or maintenance of equipment to be used by the physician's trained (~~mobile intensive care paramedics, intravenous therapy technicians, airway management~~) emergency medical service intermediate life support technicians and paramedics, emergency medical technicians, or first responders.

This section shall not apply to any act or omission which constitutes either gross negligence or willful or wanton misconduct.

Passed the House March 8, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 66

[House Bill 1433]

DEFACEMENT OF STATE MONUMENTS

AN ACT Relating to defacement of state monuments; adding a new section to chapter 9A.48 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 9A.48 RCW to read as follows:

(1) A person is guilty of defacing a state monument if he or she knowingly defaces a monument or memorial on the state capitol campus or other state property.

(2) Defacing a state monument is a misdemeanor.

Passed the House February 22, 1995.

Passed the Senate April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 67

[House Bill 1457]

COMMISSION ON ASIAN PACIFIC AMERICAN AFFAIRS

AN ACT Relating to the commission on Asian Pacific American affairs; amending RCW 43.117.010, 43.117.020, 43.117.030, 43.117.070, 43.117.080, and 49.04.100; and reenacting and amending RCW 43.03.028.

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

Sec. 1. RCW 43.03.028 and 1993 c 281 s 45 and 1993 c 101 s 14 are each reenacted and 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 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 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((-) Pacific American affairs; the state board for volunteer fire fighters; the transportation improvement board; the public 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. 2. RCW 43.117.010 and 1983 c 119 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 Asian((-) Pacific Americans have unique and special problems. It is the purpose of this chapter to improve the well-being of Asian((-) Pacific Americans by insuring their access to participation in the fields of government, business, education, and other areas. The legislature is particularly concerned with the plight of those Asian((-) Pacific Americans who, for economic, linguistic, or cultural reasons, find themselves disadvantaged or isolated from American society and the benefits of equal opportunity. The legislature further finds that it is necessary to aid Asian((-) Pacific Americans in obtaining governmental services in order to promote the health, safety, and welfare of all the residents of this state. Therefore the legislature deems it necessary to create a commission to carry out the purposes of this chapter.

Sec. 3. RCW 43.117.020 and 1974 ex.s. c 140 s 2 are each amended to read as follows:

As used in this chapter unless the context indicates otherwise:

(1) "Asian((-) Pacific Americans" include persons (~~(primarily)~~) of Japanese, Chinese, Filipino, ~~((or))~~ Korean ~~((ancestry; "Asian Americans" also include persons of))~~, Samoan, Guamanian, Thai, Viet-Nameese [Vietnamese], Cambodian, Laotian, and other ~~((Far East or))~~ South East Asian, South Asian, and Pacific Island ancestry.

(2) "Commission" means the Washington state commission on Asian((-) Pacific American affairs in the office of the governor.

Sec. 4. RCW 43.117.030 and 1974 ex.s. c 140 s 3 are each amended to read as follows:

There is established a Washington state commission on Asian((-) Pacific American affairs in the office of the governor. The now existing Asian-American advisory council shall become the commission upon enactment of this chapter. The council may transfer all office equipment, including files and records to the commission.

Sec. 5. RCW 43.117.070 and 1974 ex.s. c 140 s 7 are each amended to read as follows:

(1) The commission shall examine and define issues pertaining to the rights and needs of Asian((-) Pacific Americans, and make recommendations to the governor and state agencies with respect to desirable changes in program and law.

(2) The commission shall further advise such state government agencies on the development and implementation of comprehensive and coordinated policies, plans, and programs focusing on the special problems and needs of Asian((-) Pacific Americans.

(3) Each state department and agency shall provide appropriate and reasonable assistance to the commission as needed in order that the commission may carry out the purposes of this chapter.

Sec. 6. RCW 43.117.080 and 1974 ex.s. c 140 s 8 are each amended to read as follows:

In carrying out its duties, the commission may establish such relationships with local governments and private industry as may be needed to promote equal opportunity and benefits to Asian((-) Pacific Americans in government, education, economic development, employment, and services.

Sec. 7. RCW 49.04.100 and 1990 c 72 s 1 are each amended to read as follows:

Joint apprenticeship programs entered into under authority of chapter 49.04 RCW and which receive any state assistance in instructional or other costs, shall include entrance of women and racial minorities in such program, when available, in a ratio not less than the percentage of the minority race and female (minority and nonminority) labor force in the program sponsor's labor market area, based on current census figures issued by the office of financial management with the ultimate goal of obtaining the proportionate ratio of representation in the total program membership. Where minimum standards have been set for entering upon any such apprenticeship program, this woman and racial minority representation shall be filled when women and racial minority applicants have met such minimum standards and irrespective of individual ranking among all applicants seeking to enter the program: PROVIDED, That nothing in RCW 49.04.100 through 49.04.130 will affect the total number of entrants into the apprenticeship program or modify the dates of entrance both as established by the joint apprenticeship committee. Racial minority for the purposes of RCW

49.04.130 shall include African Americans, Asian Pacific Americans, Hispanic Americans, American Indians, Filipinos, and all other racial minority groups.

Passed the House February 22, 1995.

Passed the Senate April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 68

[House Bill 1624]

FINAL PLATS—TIME FOR SUBMISSION FOR APPROVAL

AN ACT Relating to increasing to five years the time after a preliminary plat is approved before a final plat must be submitted for approval; and amending RCW 58.17.140.

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

Sec. 1. RCW 58.17.140 and 1986 c 233 s 2 are each amended to read as follows:

Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3); PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within ~~((three))~~ five years of the date of preliminary plat approval(~~(:— PROVIDED, That this three year time period shall retroactively apply to any preliminary plat pending before a city, town, or county as of July 24, 1983, where the authority to proceed with the filing of a final plat has not lapsed under an applicable city, town, or county ordinance containing a shorter time period that was in effect when the preliminary plat was approved. An applicant who files a written request with the legislative body of the city, town, or county at least thirty days before the expiration of this three year period shall be granted one one year extension upon a showing that the applicant has attempted in good faith to submit the final plat within the three year period))~~). Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow ~~((either))~~ extensions of time that may or may not contain additional or altered conditions and requirements.

Passed the House March 8, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 69

[House Bill 1761]

DETERMINATION OF OUTPUT OF MAJOR ENERGY PROJECTS

AN ACT Relating to clarification of physical conditions for determining the output of major energy projects; and amending RCW 80.50.020 and 80.52.030.

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

Sec. 1. RCW 80.50.020 and 1977 ex.s. c 371 s 2 are each amended to read as follows:

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter;

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires;

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized;

(4) "Site" means any proposed or approved location of an energy facility;

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility;

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of 200,000 volts to connect a thermal power plant to the northwest power grid: PROVIDED, That common carrier railroads or motor vehicles shall not be included;

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum

inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquified petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission;

(8) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies;

(9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities;

(10) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense;

(11) "Council" means the energy facility site evaluation council created by RCW 80.50.030;

(12) "Counsel for ~~((the))~~ the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080;

(13) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars;

(14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities;

(b) Facilities which will have the capacity to receive liquified natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(d) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products;

(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapters 35.63, 35A.63, or 36.70 RCW;

(16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution.

Sec. 2. RCW 80.52.030 and 1981 2nd ex.s. c 6 s 3 are each amended to read as follows:

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

(1) "Public agency" means a public utility district, joint operating agency, city, county, or any other state governmental agency, entity, or political subdivision.

(2) "Major public energy project" means a plant or installation capable, or intended to be capable, of generating electricity in an amount greater than two hundred fifty megawatts, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure. Where two or more such plants are located within the same geographic site, each plant shall be considered a major public energy project. An addition to an existing facility is not deemed to be a major energy project unless the addition itself is capable, or intended to be capable, of generating electricity in an amount greater than two hundred fifty megawatts. A project which is under construction on July 1, 1982, shall not be considered a major public energy project unless the official agency budget or estimate for total construction costs for the project as of July 1, 1982, is more than two hundred percent of the first official estimate of total construction costs as specified in the senate energy and utilities committee WPPSS inquiry report, volume one, January 12, 1981, and unless, as of July 1, 1982, the projected remaining cost of construction for that project exceeds two hundred million dollars.

(3) "Cost of construction" means the total cost of planning and building a major public energy project and placing it into operation, including, but not limited to, planning cost, direct construction cost, licensing cost, cost of fuel inventory for the first year's operation, interest, and all other costs incurred prior to the first day of full operation, whether or not incurred prior to July 1, 1982.

(4) "Cost of acquisition" means the total cost of acquiring a major public energy project from another party, including, but not limited to, principal and interest costs.

(5) "Bond" means a revenue bond, a general obligation bond, or any other indebtedness issued by a public agency or its assignee.

(6) "Applicant" means a public agency, or the assignee of a public agency, requesting the secretary of state to conduct an election pursuant to this chapter.

(7) "Cost-effective" means that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(8) "System cost" means an estimate of all direct costs of a project or resource over its effective life, including, if applicable, the costs of distribution to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource.

Passed the House March 9, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 70

[Substitute House Bill 1856]

MODEL TOXICS CONTROL ACT—LIABILITY OF LENDERS

AN ACT Relating to clarifying the liability of lenders under the model toxics control act; amending RCW 70.105D.020; and reenacting and amending RCW 70.105D.030.

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

Sec. 1. RCW 70.105D.020 and 1994 c 254 s 2 are each amended to read as follows:

(1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(5) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(6) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(7) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

~~((7))~~ (8) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(9) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests include, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to

a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also include assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(10) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(11) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility; or

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holder after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (12) (e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department

has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release.

The exemption in this subsection (11)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release.

((8)) (12) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(13) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

((9)) (14) "Policing activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or re uires the borrower to take to maint~~ain~~in the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and

local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(15) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

~~((+0))~~ (16) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (11)(b)(ii) of this section.

(17) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to the effective date of this act, this five-year period shall begin as of the effective date of this act.

(18) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

~~((+1))~~ (19) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

~~((12))~~ (20) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

~~((13))~~ (21) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(22) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(23) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

Sec. 2. RCW 70.105D.030 and 1994 c 257 s 11 and 1994 c 254 s 3 are each reenacted and amended to read as follows:

(1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or wilful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020(~~((6))~~) (7) and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include deed restrictions where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing a deed restriction under this subsection, the department shall notify and seek comment from a city or county department with land use planning authority for real property subject to a deed restriction;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment; (~~((and))~~)

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(1)(b)(ii)(C); and

(i) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) the establishment of regional citizen's advisory committees, (ii) public notice of the development of investigative plans or remedial plans for releases or threatened releases, and (iii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(d) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(e) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) Before November 1st of each even-numbered year, the department shall develop, with public notice and hearing, and submit to the ways and means and appropriate standing environmental committees of the senate and house of representatives a ranked list of projects and expenditures recommended for appropriation from both the state and local toxics control accounts. The department shall also provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state toxics control account, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its top two management priorities under RCW 70.105.150, and all funds expended under this chapter.

(4) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of RCW 70.105D.020(~~(6)~~) (7) and the classification of substances or products as

hazardous substances for purposes of RCW 82.21.020(1). The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

Passed the House March 8, 1995.

Passed the Senate April 5, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

CHAPTER 71

[Senate Bill 5043]

CODE CITIES—ADOPTION OF CODES AND STATUTES BY REFERENCE

AN ACT Relating to adoption of codes and statutes by reference by code cities; and amending RCW 35A.12.140.

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

Sec. 1. RCW 35A.12.140 and 1982 c 226 s 2 are each amended to read as follows:

Ordinances may by reference adopt Washington state statutes and state, county, or city codes, regulations, or ordinances or any standard code of technical regulations, or portions thereof, including, for illustrative purposes but not limited to, fire codes and codes or ordinances relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health and sanitation, the slaughtering, processing, and selling of meats and meat products for human consumption, the production, pasteurizing, and sale of milk and milk products, or other subjects, together with amendments thereof or additions thereto, on the subject of the ordinance. Such Washington state statutes or codes or other codes or compilations so adopted need not be published in a newspaper as provided in RCW 35A.12.160, but the adopting ordinance shall be so published and a copy of any such adopted statute, ordinance, or code, or portion thereof, with amendments or additions, if any, in the form in which it was adopted, shall be ~~((authenticated and recorded by the clerk along with the adopting ordinance. Not less than one copy of such statute, code, or compilation with amendments or additions, if any, in the form in which it was adopted, shall be))~~ filed in the office of the city clerk for use and examination by the public. While any such statute, code, or compilation is under consideration by the council prior to adoption, not less than one copy thereof shall be filed in the office of the city clerk for examination by the public.

Passed the Senate March 11, 1995.
Passed the House April 6, 1995.
Approved by the Governor April 18, 1995.
Filed in Office of Secretary of State April 18, 1995.

CHAPTER 72

[Senate Bill 5078]

PREMIUM FINANCE AGREEMENTS-- DELINQUENCY CHARGES

AN ACT Relating to delinquency and cancellation charges on premium finance agreements; and amending RCW 48.56.100.

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

Sec. 1. RCW 48.56.100 and 1969 ex.s. c 190 s 10 are each amended to read as follows:

A premium finance agreement may provide for the payment by the insured of a delinquency charge of one dollar to a maximum of five percent of the delinquent installment ~~((but not to exceed five dollars on any installment which))~~ that is in default for a period of five days or more except that if the loan is primarily for personal, family, or household purposes the delinquency charge shall not exceed five dollars.

If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency charge imposed with respect to the installment in default and five dollars.

Passed the Senate March 7, 1995.
Passed the House April 5, 1995.
Approved by the Governor April 18, 1995.
Filed in Office of Secretary of State April 18, 1995.

CHAPTER 73

[Substitute Senate Bill 5164]

SERVICE OF NONCERTIFIED COPY OF ORDER—WHEN ALLOWED

AN ACT Relating to service of orders; and amending RCW 6.32.130.

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

Sec. 1. RCW 6.32.130 and 1925 ex.s. c 38 s 1 are each amended to read as follows:

An injunction order or an order requiring a person to attend and be examined made as prescribed in this chapter must be served ~~((—~~ ((+)) by delivering to the person to be served a certified copy of the original order and a copy of the affidavit on which it was made ((+)). In the case of an order requiring a person to attend and be examined and not imposing injunctive restraints, a noncertified copy may be served if the noncertified copy bears a

stamp or notation indicating the name of the judge or commissioner who signed the original order, and a stamp or notation indicating the original order has been filed with the court.

((2)) Service upon a corporation is sufficient if made upon an officer, to whom a copy of a summons must be delivered. Where an order is personally served upon a corporation, unless the officer to be served is specially designated in the order, the order may be served upon any person upon whom a summons can be served.

Passed the Senate March 13, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 74

[Senate Bill 5165]

NEGOTIABLE INSTRUMENTS—STATUTE OF LIMITATIONS

AN ACT Relating to the statute of limitations for negotiable instruments; and amending RCW 62A.3-118

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

Sec. 1. RCW 62A.3-118 and 1993 c 229 s 20 are each amended to read as follows:

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))~~ six 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.

Passed the Senate March 7, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 75

[Substitute Senate Bill 5166]

EXTENSION OF LIEN BASED ON UNDERLYING JUDGMENT

AN ACT Relating to judgments; and amending RCW 4.56.210.

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

Sec. 1. RCW 4.56.210 and 1989 c 360 s 2 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.

(2) An underlying judgment or judgment lien entered after the effective date of this act for accrued child support shall continue in force for ten years after the eighteenth birthday of the youngest child named in the order for whom support is ordered. All judgments entered after the effective date of this act shall contain the birth date of the youngest child for whom support is ordered.

(3) A lien based upon an underlying judgment continues in force for an additional ten-year period if the period of execution for the underlying judgment is extended under RCW 6.17.020.

Passed the Senate March 9, 1995.
 Passed the House April 6, 1995.
 Approved by the Governor April 18, 1995.
 Filed in Office of Secretary of State April 18, 1995.

CHAPTER 76

[Substitute Senate Bill 5214]

ADMISSIBILITY OF CHILD'S STATEMENT REGARDING PHYSICAL ABUSE

AN ACT Relating to admissibility of children's statements; and amending RCW 9A.44.120.

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

Sec. I. RCW 9A.44.120 and 1991 c 169 s 1 are each amended to read as follows:

A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another ((or)), describing any attempted act of sexual contact with or on the child by another, or describing any act of physical abuse of the child by another that results in substantial bodily harm as defined by RCW 9A.04.110, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings, including juvenile offense adjudications, in the courts of the state of Washington if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

(2) The child either:

(a) Testifies at the proceedings; or

(b) Is unavailable as a witness: PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

Passed the Senate March 11, 1995.
 Passed the House April 6, 1995.
 Approved by the Governor April 18, 1995.
 Filed in Office of Secretary of State April 18, 1995.

CHAPTER 77

[Engrossed Senate Bill 5276]

COMMON SCHOOL EDUCATION CODE NOMENCLATURE REVISED
REGARDING DISABLED CHILDREN

AN ACT Relating to nomenclature in the common school education code; amending RCW 28A.150.220, 28A.150.260, 28A.150.260, 28A.150.275, 28A.150.370, 28A.150.390, 28A.155.010, 28A.155.020, 28A.155.030, 28A.155.040, 28A.155.050, 28A.155.060, 28A.155.070, 28A.155.080, 28A.155.090, 28A.160.040, 28A.160.160, 28A.160.180, 28A.190.030, 28A.310.190, 28A.320.080, 28A.330.100, 28A.525.030, 28A.525.162, 28A.545.040, 28A.545.100, 28A.630.400, 28A.630.835, 28A.630.840, 28A.630.845, and 28A.630.872; providing a contingent effective date; providing expiration dates; and providing a contingent expiration date.

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

Sec. 1. RCW 28A.150.220 and 1993 c 371 s 1 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 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 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 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, 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~~) Special education programs for students with disabilities, 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.150.260 and 1992 c 141 s 303 are each amended to read as follows:

The basic education allocation for each annual average full time equivalent student shall be determined in accordance with the following procedures:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula based on a ratio of students to staff for the distribution of a basic education allocation for each annual average full time equivalent student enrolled in a common school. The distribution formula shall have the primary objective of equalizing educational opportunities and shall provide appropriate recognition of the following costs among the various districts within the state:

- (a) Certificated instructional staff and their related costs;
- (b) Certificated administrative staff and their related costs;
- (c) Classified staff and their related costs;
- (d) Nonsalary costs;

(e) Extraordinary costs of remote and necessary schools and small high schools, including costs of additional certificated and classified staff; and

(f) The attendance of students pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district.

(2)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature. The formula shall be for allocation purposes only. While the legislature intends that the allocations for additional instructional staff be used to increase the ratio of such staff to students, nothing in this section shall require districts to reduce the number of administrative staff below existing levels.

(b) The formula adopted by the legislature shall reflect the following ratios at a minimum: (i) Forty-nine certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades kindergarten through three; (ii) forty-six certificated instructional staff to one thousand annual average full time equivalent students in grades four through twelve; (iii) four certificated administrative staff to one thousand annual average full time equivalent students in grades kindergarten through twelve; and (iv) sixteen and sixty-seven one-hundredths classified personnel to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve.

(c) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect: PROVIDED, That the distribution formula developed pursuant to this section shall be for state apportionment and equalization purposes only and shall not be construed as mandating specific operational functions of local school districts other than those program requirements identified in RCW 28A.150.220 and 28A.150.100. The enrollment of any district shall be the annual average number of full time equivalent students and part time students as provided in RCW 28A.150.350, enrolled on the first school day of each month and shall exclude full time equivalent (~~handicapped~~) students with disabilities recognized for the purposes

of allocation of state funds for programs under RCW 28A.155.010 through 28A.155.100. The definition of full time equivalent student shall be determined by rules (~~and regulations~~) of the superintendent of public instruction: PROVIDED, That the definition shall be included as part of the superintendent's biennial budget request: PROVIDED, FURTHER, That any revision of the present definition shall not take effect until approved by the house appropriations committee and the senate ways and means committee: PROVIDED, FURTHER, That the office of financial management shall make a monthly review of the superintendent's reported full time equivalent students in the common schools in conjunction with RCW 43.62.050.

(3)(a) Certificated instructional staff shall include those persons employed by a school district who are nonsupervisory employees within the meaning of RCW 41.59.020(8): PROVIDED, That in exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision: PROVIDED, FURTHER, That the hiring of such noncertificated people shall not occur during a labor dispute and such noncertificated people shall not be hired to replace certificated employees during a labor dispute.

(b) Certificated administrative staff shall include all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4).

(4) Each annual average full time equivalent certificated classroom teacher's direct classroom contact hours shall average at least twenty-five hours per week. Direct classroom contact hours shall be exclusive of time required to be spent for preparation, conferences, or any other nonclassroom instruction duties. Up to two hundred minutes per week may be deducted from the twenty-five contact hour requirement, at the discretion of the school district board of directors, to accommodate authorized teacher/parent-guardian conferences, recess, passing time between classes, and informal instructional activity. Implementing rules to be adopted by the state board of education pursuant to RCW 28A.150.220(4) shall provide that compliance with the direct contact hour requirement shall be based upon teachers' normally assigned weekly instructional schedules, as assigned by the district administration. Additional record-keeping by classroom teachers as a means of accounting for contact hours shall not be required. Waivers from contact hours may be requested under RCW 28A.305.140.

Sec. 3. RCW 28A.150.260 and 1992 c 141 s 507 are each amended to read as follows:

The basic education allocation for each annual average full time equivalent student shall be determined in accordance with the following procedures:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula based on a ratio of students to staff for the distribution of a basic education allocation for each annual average full time equivalent student enrolled in a common school. The distribution formula shall

have the primary objective of equalizing educational opportunities and shall provide appropriate recognition of the following costs among the various districts within the state:

- (a) Certificated instructional staff and their related costs;
- (b) Certificated administrative staff and their related costs;
- (c) Classified staff and their related costs;
- (d) Nonsalary costs;

(e) Extraordinary costs of remote and necessary schools and small high schools, including costs of additional certificated and classified staff; and

(f) The attendance of students pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district.

(2)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature. The formula shall be for allocation purposes only. While the legislature intends that the allocations for additional instructional staff be used to increase the ratio of such staff to students, nothing in this section shall require districts to reduce the number of administrative staff below existing levels.

(b) The formula adopted by the legislature shall reflect the following ratios at a minimum: (i) Forty-nine certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades kindergarten through three; (ii) forty-six certificated instructional staff to one thousand annual average full time equivalent students in grades four through twelve; (iii) four certificated administrative staff to one thousand annual average full time equivalent students in grades kindergarten through twelve; and (iv) sixteen and sixty-seven one-hundredths classified personnel to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve.

(c) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect: PROVIDED, That the distribution formula developed pursuant to this section shall be for state apportionment and equalization purposes only and shall not be construed as mandating specific operational functions of local school districts other than those program requirements identified in RCW 28A.150.220 and 28A.150.100. The enrollment of any district shall be the annual average number of full time equivalent students and part time students as provided in RCW 28A.150.350, enrolled on the first school day of each month and shall exclude full time equivalent (~~handicapped~~) students with disabilities recognized for the purposes of allocation of state funds for programs under RCW 28A.155.010 through 28A.155.100. The definition of full time equivalent student shall be determined by rules (~~and regulations~~) of the superintendent of public instruction: PROVIDED, That the definition shall be included as part of the superintendent's biennial budget request: PROVIDED, FURTHER, That any revision of the present definition shall not take effect until approved by the house appropriations

committee and the senate ways and means committee: PROVIDED, FURTHER, That the office of financial management shall make a monthly review of the superintendent's reported full time equivalent students in the common schools in conjunction with RCW 43.62.050.

(3)(a) Certificated instructional staff shall include those persons employed by a school district who are nonsupervisory employees within the meaning of RCW 41.59.020(8): PROVIDED, That in exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision: PROVIDED, FURTHER, That the hiring of such noncertificated people shall not occur during a labor dispute and such noncertificated people shall not be hired to replace certificated employees during a labor dispute.

(b) Certificated administrative staff shall include all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4).

Sec. 4. RCW 28A.150.275 and 1993 c 223 s 1 are each amended to read as follows:

The basic education allocation, including applicable vocational entitlements and ~~((handicapped student))~~ special education 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.

Sec. 5. RCW 28A.150.370 and 1990 c 33 s 114 are each amended to read as follows:

In addition to those state funds provided to school districts for basic education, the legislature shall appropriate funds for pupil transportation, in accordance with RCW 28A.150.100 through 28A.150.430, 28A.160.150 through ~~((28A.160.220))~~ 28A.160.210, 28A.300.035, 28A.300.170, and 28A.500.010, and for special education programs for ~~((handicapped))~~ students with disabilities, in accordance with RCW 28A.155.010 through 28A.155.100. The legislature may appropriate funds to be distributed to school districts for population factors such as urban costs, enrollment fluctuations and for special programs, including but not limited to, vocational-technical institutes, compensatory programs, bilingual education, urban, rural, racial and disadvantaged programs, programs for gifted students, and other special programs.

Sec. 6. RCW 28A.150.390 and 1994 c 180 s 8 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))~~ special education programs for students with disabilities. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for ~~((handicapped))~~ special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.250, 28A.150.260, federal medical assistance and private funds accruing under RCW 74.09.5249 through 74.09.5253 and 74.09.5254 through 74.09.5256, and other state and local funds, excluding special excess levies.

Sec. 7. RCW 28A.155.010 and 1990 c 33 s 120 are each amended to read as follows:

It is the purpose of RCW 28A.155.010 through 28A.155.100, 28A.160.030, and 28A.150.390 to ensure that all ~~((handicapped))~~ children with disabilities as defined in RCW 28A.155.020 shall have the opportunity for an appropriate education at public expense as guaranteed to them by the Constitution of this state.

Sec. 8. RCW 28A.155.020 and 1990 c 33 s 121 are each amended to read as follows:

There is established in the office of the superintendent of public instruction an administrative section or unit for the education of children with ~~((handicapping))~~ disabling conditions.

~~((Handicapped))~~ Children with disabilities are those children in school or out of school who are temporarily or permanently retarded in normal educational processes by reason of physical or mental ~~((handicap))~~ disability, or by reason of emotional maladjustment, or by reason of other ~~((handicap))~~ disability, and those children who have specific learning and language disabilities resulting from perceptual-motor ~~((handicaps))~~ disabilities, including problems in visual and auditory perception and integration.

The superintendent of public instruction shall require each school district in the state to insure an appropriate educational opportunity for all ~~((handicapped))~~ children with disabilities between the ages of three and twenty-one, but when the twenty-first birthday occurs during the school year, the educational program may be continued until the end of that school year. The superintendent of public instruction, by rule ~~((and regulation))~~, shall establish for the purpose of excess cost funding, as provided in RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100, functional definitions of the various types of ~~((handicapping))~~ disabling conditions and eligibility criteria for ~~((handicapped))~~ special education programs for students with disabilities. For the purposes of RCW 28A.155.010 through 28A.155.100, an appropriate education is defined as an education directed to the unique needs, abilities, and limitations of the ~~((handi-eapped))~~ children with disabilities. School districts are strongly encouraged to

provide parental training in the care and education of the children and to involve parents in the classroom.

Nothing in this section shall prohibit the establishment or continuation of existing cooperative programs between school districts or contracts with other agencies approved by the superintendent of public instruction, which can meet the obligations of school districts to provide education for ~~((handicapped))~~ children with disabilities, or prohibit the continuation of needed related services to school districts by the department of social and health services.

This section shall not be construed as in any way limiting the powers of local school districts set forth in RCW 28A.155.070.

No child shall be removed from the jurisdiction of juvenile court for training or education under RCW 28A.155.010 through 28A.155.100 without the approval of the superior court of the county.

Sec. 9. RCW 28A.155.030 and 1990 c 33 s 122 are each amended to read as follows:

The superintendent of public instruction shall appoint an administrative officer of the division. The administrative officer, under the direction of the superintendent of public instruction, shall coordinate and supervise the program of special education for ~~((all-handicapped))~~ eligible children with disabilities in the school districts of the state. He or she shall cooperate with the educational service district superintendents and local school district superintendents and with all other interested school officials in ensuring that all school districts provide an appropriate educational opportunity for all ~~((handicapped))~~ children with disabilities and shall cooperate with the state secretary of social and health services and with county and regional officers on cases where medical examination or other attention is needed.

Sec. 10. RCW 28A.155.040 and 1990 c 33 s 123 are each amended to read as follows:

The board of directors of each school district, for the purpose of compliance with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100, shall cooperate with the superintendent of public instruction and with the administrative officer and shall provide an appropriate educational opportunity and give other appropriate aid and special attention to ~~((handicapped))~~ children with disabilities in regular or special school facilities within the district or shall contract for such services with other agencies as provided in RCW 28A.155.060 or shall participate in an interdistrict arrangement in accordance with RCW 28A.335.160 and 28A.225.220 and/or 28A.225.250 and 28A.225.260.

In carrying out their responsibilities under this chapter, school districts severally or jointly with the approval of the superintendent of public instruction are authorized to establish, operate, support and/or contract for residential schools and/or homes approved by the department of social and health services for aid and special attention to ~~((handicapped))~~ children with disabilities.

The cost of board and room in facilities approved by the department of social and health services shall be provided by the department of social and health services for those ~~((handicapped))~~ students with disabilities eligible for such aid under programs of the department. The cost of approved board and room shall be provided for those ~~((handicapped))~~ students with disabilities not eligible under programs of the department of social and health services but deemed in need of the same by the superintendent of public instruction: PROVIDED, That no school district shall be financially responsible for special aid programs for students who are attending residential schools operated by the department of social and health services: PROVIDED FURTHER, That the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100 shall not preclude the extension by the superintendent of public instruction of special education opportunities to ~~((handicapped))~~ children with disabilities in residential schools operated by the department of social and health services.

Sec. 11. RCW 28A.155.050 and 1990 c 33 s 124 are each amended to read as follows:

Any child who is not able to attend school and who is eligible for special excess cost aid programs authorized under RCW 28A.155.010 through 28A.155.100 shall be given such aid at home or at such other place as determined by the board of directors of the school district in which such child resides. Any school district within which such a child resides shall thereupon be granted regular apportionment of state and county school funds and, in addition, allocations from state excess funds made available for such special services for such period of time as such special aid program is given: PROVIDED, That should such child or any other ~~((handicapped))~~ child with disabilities attend and participate in a special aid program operated by another school district in accordance with the provisions of RCW 28A.225.210, 28A.225.220, and/or 28A.225.250, such regular apportionment shall be granted to the receiving school district, and such receiving school district shall be reimbursed by the district in which such student resides in accordance with rules ~~((and regulations promulgated))~~ adopted by the superintendent of public instruction for the entire approved excess cost not reimbursed from such regular apportionment.

Sec. 12. RCW 28A.155.060 and 1990 c 33 s 125 are each amended to read as follows:

For the purpose of carrying out the provisions of RCW 28A.155.020 through 28A.155.050, the board of directors of every school district shall be authorized to contract with agencies approved by the state board of education for operating ~~((handicapped))~~ special education programs for students with disabilities. Approval standards for such agencies shall conform substantially with those promulgated for approval of special education aid programs in the common schools.

Sec. 13. RCW 28A.155.070 and 1971 ex.s. c 66 s 7 are each amended to read as follows:

Special educational and training programs provided by the state and the school districts thereof for ((handicapped)) children with disabilities may be extended to include children of preschool age. School districts which extend such special programs to children of preschool age shall be entitled to the regular apportionments from state and county school funds, as provided by law, and in addition to allocations from state excess cost funds made available for such special services for those ((handicapped)) children with disabilities who are given such special services.

Sec. 14. RCW 28A.155.080 and 1990 c 33 s 126 are each amended to read as follows:

Where a ((handicapped)) child with disabilities as defined in RCW 28A.155.020 has been denied the opportunity of an educational program by a local school district superintendent under the provisions of RCW 28A.225.010, or for any other reason there shall be an affirmative showing by the school district superintendent in a writing directed to the parents or guardian of such a child within ten days of such decision that

(1) No agency or other school district with whom the district may contract under RCW 28A.155.040 can accommodate such child, and

(2) Such child will not benefit from an alternative educational opportunity as permitted under RCW 28A.155.050.

There shall be a right of appeal by the parent or guardian of such child to the superintendent of public instruction pursuant to procedures established by the superintendent and in accordance with RCW 28A.155.090.

Sec. 15. RCW 28A.155.090 and 1990 c 33 s 127 are each amended to read as follows:

The superintendent of public instruction shall have the duty and authority, through the administrative section or unit for the education of children with ((handicapping)) disabling conditions, to:

(1) Assist school districts in the formation of total school programs to meet the needs of ((handicapped)) children with disabilities;

(2) Develop interdistrict cooperation programs for ((handicapped)) children with disabilities as authorized in RCW 28A.225.250;

(3) Provide, upon request, to parents or guardians of ((handicapped)) children with disabilities, information as to the ((handicapped)) special education programs for students with disabilities offered within the state;

(4) Assist, upon request, the parent or guardian of any ((handicapped)) child with disabilities in the placement of any ((handicapped)) child with disabilities who is eligible for but not receiving special educational aid for ((handicapped)) children with disabilities;

(5) Approve school district and agency programs as being eligible for special excess cost financial aid to ((handicapped)) children with disabilities;

(6) Adjudge, upon appeal by a parent or guardian of a ~~((handicapped))~~ child with disabilities who is not receiving an educational program, whether the decision of a local school district superintendent under RCW 28A.155.080 to exclude such ~~((handicapped))~~ child with disabilities was justified by the available facts and consistent with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100~~((+))~~. If the superintendent of public instruction shall decide otherwise he or she shall apply sanctions as provided in RCW 28A.155.100 until such time as the school district assures compliance with the provisions ~~((of))~~ of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100; and

(7) Promulgate such rules ~~((and regulations))~~ as are necessary to implement the several provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100 and to ensure educational opportunities within the common school system for all ~~((handicapped))~~ children with disabilities who are not institutionalized.

Sec. 16. RCW 28A.160.040 and 1973 c 45 s 2 are each amended to read as follows:

The directors of school districts are authorized to lease school buses to nonprofit organizations to transport ~~((handicapped))~~ children with disabilities and elderly persons to and from the site of activities or programs deemed beneficial to such persons by such organizations: PROVIDED, That commercial bus transportation is not reasonably available for such purposes.

Sec. 17. RCW 28A.160.160 and 1990 c 33 s 142 are each amended to read as follows:

For purposes of RCW 28A.160.150 through 28A.160.190, except where the context shall clearly indicate otherwise, the following definitions apply:

(1) "Eligible student" means any student served by the transportation program of a school district or compensated for individual transportation arrangements authorized by RCW 28A.160.030 whose route stop is more than one radius mile from the student's school, except if the student to be transported:

(a) Is ~~((handicapped))~~ disabled under RCW 28A.155.020 and is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from the school or agency where special education services are provided, in which case no mileage distance restriction applies; or (b) qualifies for an exemption due to hazardous walking conditions.

(2) "Superintendent" means the superintendent of public instruction.

(3) "To and from school" means the transportation of students for the following purposes:

(a) Transportation to and from route stops and schools;

(b) Transportation to and from schools pursuant to an interdistrict agreement pursuant to RCW 28A.335.160;

(c) Transportation of students between schools and learning centers for instruction specifically required by statute; and

(d) Transportation of (~~handicapped~~) students with disabilities to and from schools and agencies for special education services.

Extended day transportation shall not be considered part of transportation of students "to and from school" for the purposes of (~~this 1983 act~~) chapter 61, Laws of 1983 1st ex. sess.

(4) "Hazardous walking conditions" means those instances of the existence of dangerous walkways documented by the board of directors of a school district which meet criteria specified in rules adopted by the superintendent of public instruction. A school district that receives an exemption for hazardous walking conditions should demonstrate that good faith efforts are being made to alleviate the problem and that the district, in cooperation with other state and local governing authorities, is attempting to reduce the incidence of hazardous walking conditions. The superintendent of public instruction shall appoint an advisory committee to prepare guidelines and procedures for determining the existence of hazardous walking conditions. The committee shall include but not be limited to representatives from law enforcement agencies, school districts, the department of transportation, city and county government, the insurance industry, parents, school directors and legislators.

Sec. 18. RCW 28A.160.180 and 1990 c 33 s 144 are each amended to read as follows:

Each district's annual student transportation allocation shall be based on differential rates determined by the superintendent of public instruction in the following manner:

(1) The superintendent shall annually calculate a standard student mile allocation rate for determining the transportation allocation for those services provided for in RCW 28A.160.150. "Standard student mile allocation rate," as used in this chapter, means the per mile allocation rate for transporting an eligible student. The standard student mile allocation rate may be adjusted to include such additional differential factors as distance; restricted passenger load; circumstances that require use of special types of transportation vehicles; (~~handicapped~~) student with disabilities load; and small fleet maintenance.

(2) The superintendent of public instruction shall annually calculate allocation rate(s), which shall include vehicle amortization, for determining the transportation allocation for transporting students in district-owned passenger cars, as defined in RCW 46.04.382, pursuant to RCW 28A.160.010 for services provided for in RCW 28A.160.150 if a school district deems it advisable to use such vehicles after the school district board of directors has considered the safety of the students being transported as well as the economy of utilizing a district-owned passenger car in lieu of a school bus.

(3) Prior to June 1st of each year the superintendent shall submit to the office of financial management, and the committees on education and ways and means of the senate and house of representatives a report outlining the methodology and rationale used in determining the allocation rates to be used the following year.

Sec. 19. RCW 28A.190.030 and 1990 c 33 s 172 are each amended to read as follows:

Each school district within which there is located a residential school shall, singly or in concert with another school district pursuant to RCW 28A.335.160 and 28A.225.250 or pursuant to chapter 39.34 RCW, conduct a program of education, including related student activities, for residents of the residential school. Except as otherwise provided for by contract pursuant to RCW 28A.190.050, the duties and authority of a school district and its employees to conduct such a program shall be limited to the following:

(1) The employment, supervision and control of administrators, teachers, specialized personnel and other persons, deemed necessary by the school district for the conduct of the program of education;

(2) The purchase, lease or rental and provision of textbooks, maps, audio-visual equipment, paper, writing instruments, physical education equipment and other instructional equipment, materials and supplies, deemed necessary by the school district for the conduct of the program of education;

(3) The development and implementation, in consultation with the superintendent or chief administrator of the residential school or his or her designee, of the curriculum;

(4) The conduct of a program of education, including related student activities, for residents who are three years of age and less than twenty-one years of age, and have not met high school graduation requirements as now or hereafter established by the state board of education and the school district which includes:

(a) Not less than one hundred and eighty school days each school year;

(b) Special education pursuant to RCW 28A.155.010 through 28A.155.100, and vocational education, as necessary to address the unique needs and limitations of residents; and

(c) Such courses of instruction and school related student activities as are provided by the school district for nonresidential school students to the extent it is practical and judged appropriate for the residents by the school district after consultation with the superintendent or chief administrator of the residential school: PROVIDED, That a preschool special education program may be provided for (~~handicapped~~) residential school students with disabilities;

(5) The control of students while participating in a program of education conducted pursuant to this section and the discipline, suspension or expulsion of students for violation of reasonable rules of conduct adopted by the school district; and

(6) The expenditure of funds for the direct and indirect costs of maintaining and operating the program of education that are appropriated by the legislature and allocated by the superintendent of public instruction for the exclusive purpose of maintaining and operating residential school programs of education, and funds from federal and private grants, bequests and gifts made for the purpose of maintaining and operating the program of education.

Sec. 20. RCW 28A.310.190 and 1990 c 33 s 277 are each amended to read as follows:

In addition to other powers and duties as provided by law, every educational service district board shall:

(1) If the district board deems necessary, hold each year one or more teachers' institutes as provided for in RCW 28A.415.010 and one or more school directors' meetings.

(2) Cooperate with the state supervisor of special aid for ~~((handicapped))~~ children with disabilities as provided in RCW 28A.155.010 through 28A.155.100.

(3) Certify statistical data as basis for apportionment purposes to county and state officials as provided in chapter 28A.545 RCW.

(4) Perform such other duties as may be prescribed by law or rule (~~or regulation~~) of the state board of education and/or the superintendent of public instruction as provided in RCW 28A.300.030 and 28A.305.210.

Sec. 21. RCW 28A.320.080 and 1990 c 33 s 331 are each amended to read as follows:

Every board of directors, unless otherwise specifically provided by law, shall:

(1) Provide for the expenditure of a reasonable amount for suitable commencement exercises;

(2) In addition to providing free instruction in lip reading for children ~~((handicapped))~~ disabled by defective hearing, make arrangements for free instruction in lip reading to adults ~~((handicapped))~~ disabled by defective hearing whenever in its judgment such instruction appears to be in the best interests of the school district and adults concerned;

(3) Join with boards of directors of other school districts or an educational service district pursuant to RCW 28A.310.180(3), or both such school districts and educational service district in buying supplies, equipment and services by establishing and maintaining a joint purchasing agency, or otherwise, when deemed for the best interests of the district, any joint agency formed hereunder being herewith authorized and empowered to issue interest bearing warrants in payment of any obligation owed: PROVIDED, HOWEVER, That those agencies issuing interest bearing warrants shall assign accounts receivable in an amount equal to the amount of the outstanding interest bearing warrants to the county treasurer issuing such interest bearing warrants: PROVIDED FURTHER, That the joint purchasing agency shall consider the request of any one or more private schools requesting the agency to jointly buy supplies, equipment, and services including but not limited to school bus maintenance services, and, after considering such request, may cooperate with and jointly make purchases with private schools of supplies, equipment, and services, including but not limited to school bus maintenance services, so long as such private schools pay in advance their proportionate share of the costs or provide a surety bond to cover their proportionate share of the costs involved in such purchases;

(4) Consider the request of any one or more private schools requesting the board to jointly buy supplies, equipment and services including but not limited to school bus maintenance services, and, after considering such request, may provide such joint purchasing services: PROVIDED, That such private schools pay in advance their proportionate share of the costs or provide a surety bond to cover their proportionate share of the costs involved in such purchases; and

(5) Prepare budgets as provided for in chapter 28A.505 RCW.

Sec. 22. RCW 28A.330.100 and 1991 c 116 s 17 are each amended to read as follows:

Every board of directors of a school district of the first class, in addition to the general powers for directors enumerated in this title, shall have the power:

(1) To employ for a term of not exceeding three years a superintendent of schools of the district, and for cause to dismiss him or her; and to fix his or her duties and compensation.

(2) To employ, and for cause dismiss one or more assistant superintendents and to define their duties and fix their compensation.

(3) To employ a business manager, attorneys, architects, inspectors of construction, superintendents of buildings and a superintendent of supplies, all of whom shall serve at the board's pleasure, and to prescribe their duties and fix their compensation.

(4) To employ, and for cause dismiss, supervisors of instruction and to define their duties and fix their compensation.

(5) To prescribe a course of study and a program of exercises which shall be consistent with the course of study prepared by the state board of education for the use of the common schools of this state.

(6) To, in addition to the minimum requirements imposed by this title establish and maintain such grades and departments, including night, high, kindergarten, vocational training and, except as otherwise provided by law, industrial schools, and schools and departments for the education and training of any class or classes of ~~((handicapped))~~ youth with disabilities, as in the judgment of the board, best shall promote the interests of education in the district.

(7) To determine the length of time over and above one hundred eighty days that school shall be maintained: PROVIDED, That for purposes of apportionment no district shall be credited with more than one hundred and eighty-three days' attendance in any school year; and to fix the time for annual opening and closing of schools and for the daily dismissal of pupils before the regular time for closing schools.

(8) To maintain a shop and repair department, and to employ, and for cause dismiss, a foreman and the necessary help for the maintenance and conduct thereof.

(9) To provide free textbooks and supplies for all children attending school.

(10) To require of the officers or employees of the district to give a bond for the honest performance of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all

bonds required of all such officers or employees to be paid by the district: PROVIDED, That the board may, by written policy, allow that such bonds may include a deductible proviso not to exceed two percent of the officer's or employee's annual salary.

(1) To prohibit all secret fraternities and sororities among the students in any of the schools of the said districts.

(12) To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting the safety and welfare of the public schools of the district who shall serve at the board's pleasure; the school district medical inspector or authorized deputies shall make monthly inspections of each school in the district and report the condition of the same to the board of education and board of health: PROVIDED, That children shall not be required to submit to vaccination against the will of their parents or guardian.

Sec. 23. RCW 28A.525.030 and 1980 c 154 s 17 are each amended to read as follows:

Whenever funds are appropriated for modernization of existing school facilities, the state board of education is authorized to approve the use of such funds for modernization of existing facilities, modernization being limited to major structural changes in such facilities and, as necessary to bring such facilities into compliance with the (~~handicapped~~) **barrier free** access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and rules implementing the act, both major and minor structural changes, and may include as incidental thereto the replacement of fixtures, fittings, furnishings and service systems of a building in order to bring it up to a contemporary state consistent with the needs of changing educational programs. The allocation of such funds shall be made upon the same basis as funds used for the financing of a new school plant project utilized for a similar purpose.

Sec. 24. RCW 28A.525.162 and 1990 c 33 s 455 are each amended to read as follows:

(1) Funds appropriated to the state board of education from the common school construction fund shall be allotted by the state board of education in accordance with student enrollment and the provisions of RCW 28A.525.200.

(2) No allotment shall be made to a school district until such district has provided matching funds equal to or greater than the difference between the total approved project cost and the amount of state assistance to the district for financing the project computed pursuant to RCW 28A.525.166, with the following exceptions:

(a) The state board may waive the matching requirement for districts which have provided funds for school building construction purposes through the authorization of bonds or through the authorization of excess tax levies or both

in an amount equivalent to two and one-half percent of the value of its taxable property, as defined in RCW 39.36.015.

(b) No such matching funds shall be required as a condition to the allotment of funds for the purpose of making major or minor structural changes to existing school facilities in order to bring such facilities into compliance with the ~~((handicapped))~~ barrier free access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and rules implementing the act.

(3) For the purpose of computing the state matching percentage under RCW 28A.525.166 when a school district is granted authority to enter into contracts, adjusted valuation per pupil shall be calculated using headcount student enrollments from the most recent October enrollment reports submitted by districts to the superintendent of public instruction, adjusted as follows:

(a) In the case of projects for which local bonds were approved after May 11, 1989:

(i) For districts which have been designated as serving high school districts under RCW 28A.540.110, students residing in the nonhigh district so designating shall be excluded from the enrollment count if the student is enrolled in any grade level not offered by the nonhigh district;

(ii) The enrollment of nonhigh school districts shall be increased by the number of students residing within the district who are enrolled in a serving high school district so designated by the nonhigh school district under RCW 28A.540.110, including only students who are enrolled in grade levels not offered by the nonhigh school district; and

(iii) The number of preschool ~~((handicapped))~~ students with disabilities included in the enrollment count shall be multiplied by one-half;

(b) In the case of construction or modernization of high school facilities in districts serving students from nonhigh school districts, the adjusted valuation per pupil shall be computed using the combined adjusted valuations and enrollments of each district, each weighted by the percentage of the district's resident high school students served by the high school district; and

(c) The number of kindergarten students included in the enrollment count shall be multiplied by one-half.

(4) The state board of education shall prescribe and make effective such rules ~~((and regulations))~~ as are necessary to equate insofar as possible the efforts made by school districts to provide capital funds by the means aforesaid.

(5) For the purposes of this section, "preschool ~~((handicapped))~~ students with disabilities" means developmentally disabled children of preschool age who are entitled to services under RCW 28A.155.010 through 28A.155.100 and are not included in the kindergarten enrollment count of the district.

Sec. 25. RCW 28A.545.040 and 1990 c 33 s 489 are each amended to read as follows:

The term "student residing in a nonhigh school district" and its equivalent as used in RCW 28A.545.030 through 28A.545.110 and 84.52.0531 shall mean any ~~((handicapped or nonhandicapped))~~ common school age person with or

without disabilities who resides within the boundaries of a nonhigh school district that does not conduct the particular kindergarten through grade twelve grade which the person has not yet successfully completed and is eligible to enroll in.

Sec. 26. RCW 28A.545.100 and 1990 c 33 s 494 are each amended to read as follows:

Unless otherwise agreed to by the board of directors of a nonhigh school district, the amounts which are established as due by a nonhigh school district pursuant to RCW 28A.545.030 through 28A.545.110 and 84.52.0531, as now or hereafter amended, shall constitute the entire amount which is due by a nonhigh school district for the school year for the education of any and all (~~handicapped and nonhandicapped~~) students with or without disabilities residing in the nonhigh school district who attend a high school district pursuant to RCW 28A.225.210, and for the transportation of such students by a high school district.

Sec. 27. RCW 28A.630.400 and 1991 c 285 s 2 are each amended to read as follows:

(1) The state board of education and the state board for community and technical colleges (~~(education)~~), in consultation with the superintendent of public instruction, the higher education coordinating board, the state apprenticeship training council, and community colleges, shall work cooperatively to develop by September 1, 1992, an educational paraprofessional associate of arts degree.

(2) As used in this section, an "educational paraprofessional" is an individual who has completed an associate of arts degree for an educational paraprofessional. The educational paraprofessional may be hired by a school district to assist certificated instructional staff in the direct instruction of children in small and large groups, individualized instruction, testing of children, recordkeeping, and preparation of materials. The educational paraprofessional shall work under the direction of instructional certificated staff.

(3) The training program for an educational paraprofessional associate of arts degree shall include, but is not limited to, the general requirements for receipt of an associate of arts degree and training in the areas of introduction to childhood education, orientation to (~~handicapped~~) children with disabilities, fundamentals of childhood education, creative activities for children, instructional materials for children, fine art experiences for children, the psychology of learning, introduction to education, child health and safety, child development and guidance, first aid, and a practicum in a school setting.

(3) The training program for an educational paraprofessional associate of arts degree shall include, but is not limited to, the general requirements for receipt of an associate of arts degree and training in the areas of introduction to childhood education, orientation to (~~handicapped~~) children with disabilities, fundamentals of childhood education, creative activities for children, instructional materials for children, fine art experiences for children, the psychology of learning, introduction to education, child health and safety, child development and guidance, first aid, and a practicum in a school setting.

(4) In developing the program, consideration shall be given to transferability of credit earned in this program to teacher preparation programs at colleges and universities.

(5) The agencies identified under subsection (1) of this section shall adopt rules as necessary under chapter 34.05 RCW to implement this section.

Sec. 28. RCW 28A.630.835 and 1991 c 265 s 4 are each amended to read as follows:

School districts with demonstration projects shall:

(1) Confer on a regular basis during project planning and implementation with teachers, support staff, parents of (~~handicapped~~) students with disabilities, and parents of other students served in the project;

(2) Administer annual achievement tests to all students served in the project if required in the project contract; and

(3) Cooperate in providing all information needed for the evaluation.

Sec. 29. RCW 28A.630.840 and 1994 c 13 s 6 are each amended to read as follows:

(1) Funding used in demonstration projects may include state, federal, and local funds, as determined by the district.

(2) State (~~handicapped~~) special education allocations shall be calculated for districts with demonstration projects according to the (~~handicapped~~) special education funding formula in use for other districts, except for the provisions of RCW 28A.630.845 and with the following changes:

(a) Funding for school districts that had pilot projects approved under section 13, chapter 233, Laws of 1989, and that were participating in projects under this section on January 31, 1992, shall be based for the duration of a project on four percent of the kindergarten through twelfth grade enrollment considered as specific learning disabled, without regard to the actual number of students so identified. The legislature recognizes the importance of continuing and developing the pilot projects.

(b) The funding percentages for districts with demonstration projects specified in (a) of this subsection and in RCW 28A.630.845 shall be used to adjust basic education allocations under RCW 28A.150.260 and learning assistance program allocations under RCW 28A.165.070.

(c) State (~~handicapped~~) special education allocations up to the level required by federal maintenance of effort rules shall be expended for special education services to (~~handicapped~~) students with disabilities. Allocations greater than the amount needed to comply with federal maintenance of effort rules may at the option of the district be designated as noncategorical project funds and may be expended on services to any student served in the project.

(3) Learning assistance program allocations shall be calculated for districts with demonstration projects according to the funding formula in use for other districts, except that any increases in the district allocation above the fiscal year

1991 amount shall be designated as noncategorical project funds and may be expended on services to any student served in the project.

(4) Transitional bilingual program allocations shall be calculated for districts with demonstration projects according to the funding formula in use for other districts, except that any increases in the district allocation above the fiscal year 1991 amount shall be designated as noncategorical project funds and may be expended on services to any student served in the project.

(5) Expenditures of noncategorical project funds under subsections (2)(c), (3), and (4) of this section shall be accounted for in new and discrete program or subprogram codes designated by the superintendent of public instruction. The codes shall take effect by September 1, 1991.

Sec. 30. RCW 28A.630.845 and 1994 c 13 s 1 are each amended to read as follows:

(1) The legislature finds that the state system of funding ~~((handicapped))~~ special education has fiscal incentives to label children as ~~((handicapped))~~ disabled and that unnecessary labeling can be detrimental to children. The legislature encourages demonstration projects that provide needed services without unnecessary labeling. To test this approach, the legislature intends to maintain the funding level for innovative special services programs that reduce the incidence of unnecessary labeling.

(2) School districts may propose demonstration projects under this subsection to provide needed services and achieve major reductions in the percentage of district students labeled as ~~((handicapped))~~ disabled in one or more specified categories. State ~~((handicapped))~~ special education funding for districts with such projects shall be based for the duration of the project on the average percentage of the kindergarten through twelfth grade enrollment in the specified categories during the school year before the start of the project.

(3) School districts with specific learning disabled enrollment at or above four percent of the district's kindergarten through twelfth grade enrollment may propose demonstration projects under this subsection to provide needed services and reduce unnecessary labeling to below the four percent level. When the specific learning disabled enrollment is below the four percent level, funding for the district shall be based on four percent of the kindergarten through twelfth grade enrollment considered as specific learning disabled, without regard to the actual number of students so identified.

(4) Funding under subsections (2) and (3) of this section is contingent on the following: (a) The funding is spent on children needing special services; and (b) the overall percentage of first through twelfth grade students in the district labeled as ~~((handicapped))~~ disabled declines each year of the project, excluding ~~((handicapped))~~ students with disabilities who transfer into the district.

Sec. 31. RCW 28A.630.872 and 1992 c 137 s 8 are each amended to read as follows:

(1) The state board of education, where appropriate, or the superintendent of public instruction, where appropriate, may grant waivers to pilot project districts consistent with law if necessary to implement a pilot project proposal.

(2) State rules dealing with public health, safety, and civil rights, including accessibility by the ((handicapped)) disabled, shall not be waived. A school district may request the state board of education or the superintendent of public instruction to ask the United States department of education or other federal agencies to waive certain federal regulations necessary to fully implement the proposed pilot project.

NEW SECTION. **Sec. 32.** Section 1 of this act shall expire September 1, 2000. However, section 1 of this act shall not expire if, by September 1, 2000, a law is not enacted stating that a school accountability and academic assessment system is not in place.

NEW SECTION. **Sec. 33.** Section 3 of this act shall take effect September 1, 2000. However, section 3 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.

NEW SECTION. **Sec. 34.** Sections 28 through 30 of this act expire September 1, 2001.

NEW SECTION. **Sec. 35.** Section 31 of this act expires June 30, 1999.

Passed the Senate March 13, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 78

[Senate Bill 5355]

CLAIMS FOR DAMAGES CAUSED BY DEER OR ELK

AN ACT Relating to claims for damages caused by deer or elk; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** Claims exceeding two thousand dollars that have been filed pursuant to RCW 77.12.280(1) and that have been submitted to the legislature pursuant to RCW 4.92.040(5) may be paid as submitted by the risk management office. Payment shall be made by the department from moneys appropriated for that purpose.

NEW SECTION. **Sec. 2.** The house of representatives and the senate committees on natural resources, together with the department of fish and wildlife, shall study the issue of damages caused by wildlife and develop long-term policy proposals regarding state compensation to be made for such damages. These proposals shall be submitted by December 1, 1995.

NEW SECTION. Sec. 3. This act shall expire on January 1, 1996.

Passed the Senate March 7, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 79

[Senate Bill 5369]

MERGER OF FIRE PROTECTION DISTRICTS—MAJORITY VOTE REQUIRED

AN ACT Relating to merger of fire protection districts; and amending RCW 52.06.050.

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

Sec. 1. RCW 52.06.050 and 1947 c 254 s 16 are each amended to read as follows:

The board of the merging district shall notify the board of the merger district of the results of the election. If (~~three-fifths~~) a majority of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger.

Passed the Senate March 7, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 80

[Senate Bill 5398]

EXPERT WITNESSES—FILING OF PERSONAL SERVICES CONTRACTS

AN ACT Relating to reporting of personal service contracts; and amending RCW 39.29.040.

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

Sec. 1. RCW 39.29.040 and 1987 c 414 s 7 are each amended to read as follows:

This chapter does not apply to:

(1) Contracts specifying a fee of less than two thousand five hundred dollars if the total of the contracts from that agency with the contractor within a fiscal year does not exceed two thousand five hundred dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW; and

(8) Contracts for the employment of expert witnesses for the purposes of litigation(~~(-except that such contracts shall be filed within the same time period as emergency contracts)).~~).

Passed the Senate March 3, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 81

[Senate Bill 5401]

STUDIES OF MEDICAL BENEFITS FOR INJURED WORKERS UNDER CONSOLIDATED HEALTH CARE SYSTEM—EXTENSION OF DEADLINES

AN ACT Relating to extending deadlines for studies of medical benefits for injured workers under a consolidated health care system; and amending RCW 43.72.850 and 43.72.860.

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

Sec. 1. RCW 43.72.850 and 1993 c 492 s 485 are each amended to read as follows:

On or before January 1, 1995, and January 1, 1996, the health services commission, in coordination with the department of labor and industries and the workers' compensation advisory committee, shall study and make an interim report, and on or before January 1, ~~((1996))~~ 1997, a final report, to the governor and appropriate committees of the legislature on the provision of medical benefits for injured workers under a consolidated health care system. The study shall include a review of options and recommendations for modifying the industrial insurance system to provide medical services for injured workers in a more cost-effective manner under a consolidated system, and may include consideration of the purchase of industrial insurance medical benefits through the health care authority or the inclusion of industrial insurance medical benefits in the services offered by certified health plans or other appropriate options. The commission should also give consideration to at least the following issues: The use of managed care and the effect of managed care options on the injured workers' choice of health services provider; the potential cost savings or other impacts of

various consolidation options; the benefit structure required under industrial insurance; the potential for consolidation to meet or exceed existing medical cost management of the medical aid fund; the impact of separating the medical management of claims from the disability management of claims; the relationship between return-to-work efforts, medical services, and disability prevention; the relationship between medical services and rehabilitation services; and the effects of the quasi-judicial system that determines industrial insurance rights and obligations. In addition, the final report shall include a proposed plan and timeline for including the medical benefits of the industrial insurance system in the services offered by certified health plans. The proposed plan shall assure that:

(1) The plan shall not take effect until at least ninety-seven percent of state residents have access to the uniform benefits package as required in chapter 492, Laws of 1993;

(2) The uniform benefits package of the certified health plan will provide benefits for injured workers that are at least equivalent to the medical benefits provided to injured workers under Title 51 RCW as determined by the department of labor and industries as of the effective date of the plan, including payments for services that are ancillary to industrial insurance medical benefits, such as but not limited to medical examinations for permanent disabilities;

(3) Other nonmedical benefits required to be provided under Title 51 RCW, such as but not limited to total or partial disability benefits or vocational rehabilitation benefits, are not affected;

(4) Employers who do not choose to become certified health plans under chapter 492, Laws of 1993, will continue to be required to provide industrial insurance medical benefits under Title 51 RCW;

(5) Employees participating in the plan shall not be required to pay deductibles, copayments, or other point of service charges for services related to industrial insurance injuries or diseases, such costs to be paid by the department of labor and industries or self-insured employer, as applicable;

(6) The plan includes a mechanism to return to workers and employers, in equal shares, any savings that are realized in the costs of medical services for injured workers, as identified by the department of labor and industries;

(7) The majority of the employer's employees or, if the employees are represented for collective bargaining purposes, the exclusive bargaining representative voluntarily agree to the employer's participation in the plan.

Sec. 2. RCW 43.72.860 and 1993 c 492 s 486 are each amended to read as follows:

(1) The department of labor and industries, in consultation with the workers' compensation advisory committee, may conduct pilot projects to purchase medical services for injured workers through managed care arrangements. The projects shall assess the effects of managed care on the cost and quality of, and employer and employee satisfaction with, medical services provided to injured workers.

(2) The pilot projects may be limited to specific employers. The implementation of a pilot project shall be conditioned upon a participating employer and a majority of its employees, or, if the employees are represented for collective bargaining purposes, the exclusive bargaining representative, voluntarily agreeing to the terms of the pilot. Unless the project is terminated by the department, both the employer and employees are bound by the project agreements for the duration of the project.

(3) Solely for the purpose and duration of a pilot project, the specific requirements of Title 51 RCW that are identified by the department as otherwise prohibiting implementation of the pilot project shall not apply to the participating employers and employees to the extent necessary for conducting the project. Managed care arrangements for the pilot projects may include the designation of doctors responsible for the care delivered to injured workers participating in the projects.

(4) The projects shall conclude no later than January 1, 1997. The department shall make an interim report on the projects to the governor and appropriate committees of the legislature on or before October 1, 1996. The department shall present the final results of the pilot projects and any final recommendations related to the projects to the governor and appropriate committees of the legislature on or before ~~((October 1, 1996))~~ April 1, 1997.

Passed the Senate March 7, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 82

[Substitute Senate Bill 5410]

WASHINGTON PARK ARBORETUM

AN ACT Relating to the Washington park arboretum; adding a new section to chapter 1.20 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 the arboreta in this state act as living museums devoted to the display and conservation of woody plant species from around the world that can grow in the Pacific Northwest. Arboreta enhance public appreciation for the aesthetic diversity of temperate woody plants; conserve both natural and cultivated woody plant taxa to preserve their diversity for future appreciation; educate the public and students concerning urban landscape use and the natural biology of temperate woody plants; and cooperate with similar institutions in this region and around the world in achieving these common goals. The legislature further finds that arboreta are of increasing importance as world biodiversity declines.

The Washington park arboretum is a two-hundred acre living museum that is managed cooperatively by the city of Seattle and the University of Washing-

ton. It is devoted to the display and conservation of collections of plants from around the world which can grow in the Pacific Northwest. These plants are used for education, research, conservation, and a sense of public pleasure. The Washington park arboretum, the oldest center for botanical and gardening learning in the Pacific Northwest, is recognized as one of the two foremost collections of woody plants in the United States of America and enjoys an excellent international reputation. The legislature finds that it is fitting and appropriate to recognize the importance of the overall mission of the Washington park arboretum.

NEW SECTION. Sec. 2. A new section is added to chapter 1.20 RCW to read as follows:

The Washington park arboretum is hereby designated as an official arboretum of the state of Washington.

Passed the Senate March 2, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 83

[Senate Bill 5430]

INSURANCE COMPANIES—CAPITAL AND SURPLUS REQUIREMENTS

AN ACT Relating to the capital and surplus requirements of insurance companies; amending RCW 48.05.340; and adding new sections to chapter 48.05 RCW.

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

NEW SECTION. Sec. 1. As used in sections 1 through 13 of this act, these terms have the following meanings:

- (1) "RBC" means risk-based capital.
- (2) "NAIC" means the national association of insurance commissioners.
- (3) "Domestic insurer" means any insurance company domiciled in this state.
- (4) "Foreign or alien insurer" means any insurance company that is licensed to do business in this state under this chapter but is not domiciled in this state.
- (5) "Life and disability insurer" means any insurance company authorized to write only life insurance, disability insurance, or both, as defined in chapter 48.11 RCW.
- (6) "Property and casualty insurer" means any insurance company authorized to write only property insurance, marine and transportation insurance, general casualty insurance, vehicle insurance, or any combination thereof, including disability insurance, as defined in chapter 48.11 RCW.
- (7) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.
- (8) "Negative trend" means, with respect to a life insurer, a disability insurer, or a life and disability insurer, the negative trend over a period of time,

as determined in accordance with the trend test calculation included in the RBC instructions.

(9) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with section 2(5) of this act.

(10) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC.

(11) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product 1.5 and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(d) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(12) "RBC plan" means a comprehensive financial plan containing the elements specified in section 3(2) of this act. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(13) "RBC report" means the report required in section 2 of this act.

(14) "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed under RCW 48.05.250; and

(b) Other items, if any, as the RBC instructions may provide.

NEW SECTION. Sec. 2. (1) Every domestic insurer shall, on or prior to the filing date, which is hereby established as March 1, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing that information required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) Fifteen days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A life and disability insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the RBC requirements and the formulas, schedules, and instructions under sections 1 through 13 of this act is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the RBC requirements.

(5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment.

NEW SECTION. Sec. 3. (1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by an insurer indicating that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC, but less than its company action level RBC; or

(ii) If a life and disability insurer, the insurer has total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and 2.5 and has a negative trend;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under section 7 of this act; or

(c) If, under section 7 of this act, an insurer challenges an adjusted RBC report that indicates an event in (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that:

(a) Identifies the conditions that contribute to the company action level event;

(b) Contains proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provides projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identifies the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identifies the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report under section 7 of this act, within forty-five days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under section 7 of this act, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the insurer's rights to a hearing under section 7 of this act, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with

the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) The state has an RBC provision substantially similar to section 8(1) of this act; and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

NEW SECTION. Sec. 4. (1) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to an insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under section 7 of this act;

(c) If, under section 7 of this act, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for such failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(e) The failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in section 3(3) of this act;

(f) Notification by the commissioner to the insurer that:

(i) The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under section 7 of this act;

(g) If, under section 7 of this act, the insurer challenges a determination by the commissioner under (f) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(h) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under section 7 of this act; or

(i) If, under section 7 of this act, the insurer challenges a determination by the commissioner under (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform the examination or analysis the commissioner deems necessary of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying those corrective actions the commissioner determines are required.

(3) In determining corrective actions, the commissioner may take into account those factors deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken under the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five days after the occurrence of the regulatory action level event;

(b) If the insurer challenges an adjusted RBC report under section 7 of this act, and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan under section 7 of this act, and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or other party as directed by the commissioner.

NEW SECTION. Sec. 5. (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under section 7 of this act;

(c) If, under section 7 of this act, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the

commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the insurer has not challenged the corrective order under section 7 of this act; or

(e) If the insurer has challenged a corrective order under section 7 of this act and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) Take those actions required under section 4 of this act regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take those actions necessary to cause the insurer to be placed under regulatory control under chapter 48.31 RCW. In the event the commissioner takes these actions, the authorized control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. In the event the commissioner takes actions under this subsection pursuant to an adjusted RBC report, the insurer is entitled to those protections afforded to insurers under RCW 48.31.121 pertaining to summary proceedings.

NEW SECTION. Sec. 6. (1) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report indicating that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under section 7 of this act; or

(c) If, under section 7 of this act, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a mandatory control level event:

(a) With respect to a life and disability insurer, the commissioner shall take those actions necessary to place the insurer under regulatory control under chapter 48.31 RCW. In that event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner

may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(b) With respect to a property and casualty insurer, the commissioner shall take those actions necessary to place the insurer under regulatory control under chapter 48.31 RCW, or, in the case of an insurer that is writing no business and that is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

NEW SECTION. Sec. 7. (1) Upon notification to an insurer by the commissioner of any of the following, the insurer shall have the right to a hearing, in accordance with chapters 48.04 and 34.05 RCW, at which the insurer may challenge any determination or action by the commissioner:

(a) Of an adjusted RBC report; or

(b)(i) That the insurer's RBC plan or revised RBC plan is unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to such insurer; or

(c) That the insurer has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(d) Of a corrective order with respect to the insurer.

(2) The insurer shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under this section. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing. The date shall be no less than ten nor more than thirty days after the date of the insurer's request.

NEW SECTION. Sec. 8. (1) All RBC reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of an insurer and any corrective order issued by the commissioner, with respect to any domestic insurer or foreign insurer that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner.

This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not a means to rank insurers generally. Therefore, except as otherwise required under the provisions of sections 1 through 13 of this act, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels, or any of them, or an inappropriate comparison of any other amount to the insurer's RBC levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write.

NEW SECTION. **Sec. 9.** (1) The provisions of sections 1 through 13 of this act are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under those laws, including, but not limited to, chapter 48.31 RCW.

(2) The commissioner may exempt any domestic property and casualty insurer from sections 1 through 13 of this act, if the insurer:

- (a) Writes direct business only in this state;
- (b) Writes direct annual premiums of two million dollars or less; and
- (c) Assumes no reinsurance in excess of five percent of direct premiums written.

NEW SECTION. Sec. 10. (1) Any foreign or alien insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended by the later of:

(a) The date an RBC report would be required to be filed by a domestic insurer under section 2 of this act; or

(b) Fifteen days after the request is received by the foreign or alien insurer. Any foreign or alien insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to any foreign or alien insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC statute is in force in that state, under the provisions of sections 1 through 13 of this act, if the insurance commissioner of the state of domicile of the foreign or alien insurer fails to require the foreign or alien insurer to file an RBC plan in the manner specified under that state's RBC statute, the commissioner may require the foreign or alien insurer to file an RBC plan. In this event, the failure of the foreign or alien insurer to file an RBC plan is grounds to order the insurer to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign or alien insurer, if no domiciliary receiver has been appointed with respect to the foreign or alien insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign or alien insurer, the commissioner may apply for an order under RCW 48.31.080 or 48.31.090 to conserve the assets within this state of foreign or alien insurers, and the occurrence of the mandatory control level event is considered adequate grounds for the application.

NEW SECTION. Sec. 11. There is no liability on the part of, and no cause of action may arise against, the commissioner or insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under sections 1 through 13 of this act.

NEW SECTION. Sec. 12. All notices by the commissioner to an insurer that may result in regulatory action are effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission are effective upon the insurer's receipt of the notice.

NEW SECTION. Sec. 13. For RBC reports required by property and casualty insurers for 1995, the following requirements apply in lieu of sections 3 through 6 of this act:

(1) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action.

(2) In the event of a regulatory action level event under section 4(1) (a), (b), or (c) of this act the commissioner shall take the actions required under section 3 of this act.

(3) In the event of a regulatory action level event under section 4(1) (d), (e), (f), (g), (h), or (i) of this act or an authorized control level event, the commissioner shall take the actions required under section 4 of this act.

(4) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under section 5 of this act.

Sec. 14. RCW 48.05.340 and 1994 c 171 s 1 are each amended to read as follows:

(1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as shown below, a foreign or alien insurer, whether stock or mutual, or a domestic insurer hereafter formed shall possess unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and additional funds in surplus, as follows, and shall thereafter maintain unimpaired a combined total of: (a) The paid-in capital stock if a stock insurer or surplus if a mutual insurer, plus (b) such additional funds in surplus equal to the total of the following initial requirements:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life	\$2,000,000	\$2,000,000
Disability	2,000,000	2,000,000
Life and disability	2,400,000	2,400,000
Property	2,000,000	2,000,000
Marine & transportation	2,000,000	2,000,000
General casualty	2,400,000	2,400,000
Vehicle	2,000,000	2,000,000
Surety	2,000,000	2,000,000
Any two of the following		
kinds of insurance:		
Property, marine & transportation, general casualty, vehicle, surety, disability	3,000,000	3,000,000
Multiple lines (all insurances except life and title insurance)		
	3,000,000	3,000,000
Title (in accordance with the provisions of chapter 48.29 RCW)		

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it may operate or propose to operate, whether or not only a portion of such kinds are to be transacted in this state.

(3) Until December 31, 1996, a foreign or alien insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such authority. A domestic insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such an authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special or additional surplus as required of it under laws in force immediately prior to June 9, 1994.

~~((4) The commissioner may, by rule, require insurers to maintain additional capital and surplus based upon the type, volume, and nature of insurance business transacted consistent with the methods then adopted by the National Association of Insurance Commissioners for determining the appropriate amount of additional capital and surplus to be required. In the absence of an applicable rule, the commissioner may, after a hearing or with the consent of the insurer, require an insurer to have and maintain a larger amount of capital or surplus than prescribed under this section or the rules under this section, based upon the volume and kinds of insurance transacted by the insurer and on the principles of risk based capital as determined by the National Association of Insurance Commissioners. This subsection applies only to insurers authorized to write life insurance, disability insurance, or both.))~~

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. Sections 1 through 13 of this act are each added to chapter 48.05 RCW.

Passed the Senate March 8, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 84

[Senate Bill 5433]

INSURERS—PROHIBITED INVESTMENTS

AN ACT Relating to prohibited investments by insurers; and amending RCW 48.13.270.

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

Sec. 1. RCW 48.13.270 and 1993 c 92 s 4 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))~~ (3) Any investment or loan ineligible under the provisions of RCW 48.13.030;

~~((5))~~ (4) Securities issued by any insolvent corporation;

~~((6))~~ (5) Obligations contrary to the provisions of RCW 48.13.273; or

~~((7))~~ (6) Any investment or security which is found by the commissioner to be designed to evade any prohibition of this code.

Passed the Senate March 7, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 85

[Substitute Senate Bill 5435]

MEDICARE SUPPLEMENTAL INSURANCE—PREEXISTING CONDITION LIMITATIONS

AN ACT Relating to preexisting condition limitations in medicare supplement policies or certificates; amending RCW 48.66.020 and 48.66.130; and adding a new section to chapter 48.66 RCW.

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

Sec. 1. RCW 48.66.020 and 1992 c 138 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) "Medicare supplemental insurance" or "medicare supplement insurance policy" refers to a group or individual policy of disability insurance or a subscriber contract of a health care service contractor, a health maintenance organization, or a fraternal benefit society, which relates its benefits to medicare, or which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. Such term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) A policy issued pursuant to a contract under Section 1876 or Section 1833 of the federal social security act (42 U.S.C. Sec. 1395 et seq.), or an issued policy under a demonstration project authorized pursuant to amendments to the federal social security act; or

(c) Insurance policies or health care benefit plans, including group conversion policies, provided to medicare eligible persons, that are not marketed or held to be medicare supplement policies or benefit plans.

(2) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(3) "Medicare eligible expenses" means health care expenses of the kinds covered by medicare, to the extent recognized as reasonable and medically necessary by medicare.

(4) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy or subscriber contract, the proposed certificate holder.

(5) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy.

(6) "Loss ratio" means the incurred claims as a percentage of the earned premium computed under rules adopted by the insurance commissioner.

(7) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during a specified time period immediately prior to the effective date of coverage.

(8) "Disclosure form" means the form designated by the insurance commissioner which discloses medicare benefits, the supplemental benefits offered by the insurer, and the remaining amount for which the insured will be responsible.

(9) "Issuer" includes insurance companies, health care service contractors, health maintenance organizations, fraternal benefit societies, and any other entity

delivering or issuing for delivery (~~(in this state)~~) medicare supplement policies or certificates to a resident of this state.

Sec. 2. RCW 48.66.130 and 1992 c 138 s 9 are each amended to read as follows:

(1) (~~(No later than July 1, 1992)~~) On or after January 1, 1996, and notwithstanding any other provision of Title 48 RCW, a medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than (~~(six)~~) three months from the effective date of coverage because it involved a preexisting condition.

(2) (~~(No later than July 1, 1992)~~) On or after January 1, 1996, a medicare supplement policy or certificate shall not define a preexisting condition more restrictively than as a condition for which medical advice was given or treatment was recommended by or received from a physician, or other health care provider acting within the scope of his or her license, within (~~(six)~~) three months before the effective date of coverage.

(3) If a medicare supplement insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

NEW SECTION. Sec. 3. A new section is added to chapter 48.66 RCW to read as follows:

Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall:

(1) Issue coverage under its standardized benefit plans B, C, D, E, F, and G without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, or G, or other more comprehensive coverage than the replaced policy;

(2) Issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy; and

(3) Set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

- (a) Age; or
- (b) Disability or end-stage renal disease.

Passed the Senate March 13, 1995.
Passed the House April 6, 1995.
Approved by the Governor April 18, 1995.
Filed in Office of Secretary of State April 18, 1995.

CHAPTER 86

[Engrossed Senate Bill 5437]

INSURERS, CERTIFIED HEALTH PLANS, HEALTH SERVICE CONTRACTORS, AND HEALTH MAINTENANCE ORGANIZATIONS—DISCLOSURE OF MATERIAL TRANSACTIONS

AN ACT Relating to the disclosure of material transactions of insurance companies, certified health plans, health service contractors, and health maintenance organizations; adding new sections to chapter 48.05 RCW; adding new sections to chapter 48.43 RCW; adding new sections to chapter 48.44 RCW; adding new sections to chapter 48.46 RCW; and adding a new section to chapter 42.17 RCW.

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

NEW SECTION. Sec. 1. (1) Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and sections 2 through 6 of this act are exempt from public inspection and copying and are not subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate.

NEW SECTION. Sec. 2. No acquisitions or dispositions of assets need be reported under section 1 of this act if the acquisitions or dispositions are not material. For purposes of sections 1 through 6 of this act, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period;

or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total assets as reported in its most recent statutory statement filed with the commissioner.

NEW SECTION. Sec. 3. (1) Asset acquisitions subject to sections 1 through 6 of this act include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such a purpose.

(2) Asset dispositions subject to sections 1 through 6 of this act include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether the assignment is for the benefit of creditors or otherwise.

NEW SECTION. Sec. 4. (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (a) Date of the transaction;
- (b) Manner of acquisition or disposition;
- (c) Description of the assets involved;
- (d) Nature and amount of the consideration given or received;
- (e) Purpose of or reason for the transaction;
- (f) Manner by which the amount of consideration was determined;
- (g) Gain or loss recognized or realized as a result of the transaction; and
- (h) Names of the persons from whom the assets were acquired or to whom they were disposed.

(2) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such an insurer ceded substantially all of its direct and assumed business to the pool. An insurer has ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

NEW SECTION. Sec. 5. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under section 1 of this act if the nonrenewals, cancellations, or revisions are not material. For purposes of sections 1 through 6 of this act, a material nonrenewal, cancellation, or revision is one that affects:

- (a) More than fifty percent of a property and casualty insurer's total ceded written premium;

(b) More than fifty percent of the property and casualty insurer's total ceded indemnity and loss adjustment reserves;

(c) More than fifty percent of a nonproperty and casualty insurer's total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement;

(d) More than ten percent of an insurer's total cession when it is replaced by one or more unauthorized reinsurers; or

(e) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if:

(a) A property and casualty insurer's total ceded written premium represents, on an annualized basis, less than ten percent of its total written premium for direct and assumed business; or

(b) A nonproperty and casualty insurer's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession.

NEW SECTION. Sec. 6. (1) The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(a) The effective date of the nonrenewal, cancellation, or revision;

(b) The description of the transaction with an identification of the initiator;

(c) The purpose of or reason for the transaction; and

(d) If applicable, the identity of the replacement reinsurers.

(2) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer has ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

NEW SECTION. Sec. 7. (1) Every certified health plan domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and sections 8 through 12 of this act are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the certified health plan to which it pertains unless the commissioner, after giving the certified health plan that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate.

NEW SECTION. Sec. 8. No acquisitions or dispositions of assets need be reported pursuant to section 7 of this act if the acquisitions or dispositions are not material. For purposes of sections 7 through 12 of this act, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting certified health plan's total assets as reported in its most recent statutory statement filed with the commissioner.

NEW SECTION. Sec. 9. (1) Asset acquisitions subject to sections 7 through 12 of this act include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting certified health plan or the acquisition of materials for such purpose.

(2) Asset dispositions subject to sections 7 through 12 of this act include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise.

NEW SECTION. Sec. 10. (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (a) Date of the transaction;
- (b) Manner of acquisition or disposition;
- (c) Description of the assets involved;
- (d) Nature and amount of the consideration given or received;
- (e) Purpose of or reason for the transaction;
- (f) Manner by which the amount of consideration was determined;

(g) Gain or loss recognized or realized as a result of the transaction; and
(h) Names of the persons from whom the assets were acquired or to whom they were disposed.

(2) Certified health plans are required to report material acquisitions and dispositions on a nonconsolidated basis unless the certified health plan is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the certified health plan's reserves and such certified health plan ceded substantially all of its direct and assumed business to the pool. A certified health plan has ceded substantially all of its direct and assumed business to a pool if the certified health plan has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the certified health plan's net worth.

NEW SECTION. Sec. 11. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under section 7 of this act if the nonrenewals, cancellations, or revisions are not material. For purposes of sections 7 through 12 of this act, a material nonrenewal, cancellation, or revision is one that affects:

(a) More than fifty percent of a certified health plan's total reserve credit taken for business ceded, on an annualized basis, as indicated in the certified health plan's most recent annual statement;

(b) More than ten percent of a certified health plan's total cession when it is replaced by one or more unauthorized reinsurers; or

(c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if the certified health plan's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession.

NEW SECTION. Sec. 12. (1) The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(a) The effective date of the nonrenewal, cancellation, or revision;

(b) The description of the transaction with an identification of the initiator;

(c) The purpose of or reason for the transaction; and

(d) If applicable, the identity of the replacement reinsurers.

(2) Certified health plans are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the certified health plan is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the certified health plan's

reserves and the certified health plan ceded substantially all of its direct and assumed business to the pool. A certified health plan has ceded substantially all of its direct and assumed business to a pool if the certified health plan has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the certified health plan's net worth.

NEW SECTION. Sec. 13. (1) Every health care service contractor domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and sections 14 through 18 of this act are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health care service contractor to which it pertains unless the commissioner, after giving the health care service contractor that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate.

NEW SECTION. Sec. 14. No acquisitions or dispositions of assets need be reported pursuant to section 13 of this act if the acquisitions or dispositions are not material. For purposes of sections 13 through 18 of this act, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting health care service contractor's total assets as reported in its most recent statutory statement filed with the commissioner.

NEW SECTION. Sec. 15. (1) Asset acquisitions subject to sections 13 through 18 of this act include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting health care service contractor or the acquisition of materials for such purpose.

(2) Asset dispositions subject to sections 13 through 18 of this act include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise.

NEW SECTION. Sec. 16. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of or reason for the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and
- (8) Names of the persons from whom the assets were acquired or to whom they were disposed.

NEW SECTION. Sec. 17. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under section 13 of this act if the nonrenewals, cancellations, or revisions are not material. For purposes of sections 13 through 18 of this act, a material nonrenewal, cancellation, or revision is one that affects:

(a) More than fifty percent of a health care service contractor's total reserve credit taken for business ceded, on an annualized basis, as indicated in the health care service contractor's most recent annual statement;

(b) More than ten percent of a health care service contractor's total cession when it is replaced by one or more unauthorized reinsurers; or

(c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if a health care service contractor's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession.

NEW SECTION. Sec. 18. The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (1) The effective date of the nonrenewal, cancellation, or revision;
- (2) The description of the transaction with an identification of the initiator;
- (3) The purpose of or reason for the transaction; and
- (4) If applicable, the identity of the replacement reinsurers.

NEW SECTION. **Sec. 19.** (1) Every health maintenance organization domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

(a) Commissioner; and

(b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and sections 20 through 24 of this act are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health maintenance organization to which it pertains unless the commissioner, after giving the health maintenance organization that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate.

NEW SECTION. **Sec. 20.** No acquisitions or dispositions of assets need be reported pursuant to section 19 of this act if the acquisitions or dispositions are not material. For purposes of sections 19 through 24 of this act, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting health maintenance organization's total assets as reported in its most recent statutory statement filed with the commissioner.

NEW SECTION. **Sec. 21.** (1) Asset acquisitions subject to sections 19 through 24 of this act include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting health maintenance organization or the acquisition of materials for such purpose.

(2) Asset dispositions subject to sections 19 through 24 of this act include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation,

abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise.

NEW SECTION. Sec. 22. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of or reason for the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and
- (8) Names of the persons from whom the assets were acquired or to whom they were disposed.

NEW SECTION. Sec. 23. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under section 19 of this act if the nonrenewals, cancellations, or revisions are not material. For purposes of sections 19 through 24 of this act, a material nonrenewal, cancellation, or revision is one that affects:

- (a) More than fifty percent of a health maintenance organization's total reserve credit taken for business ceded, on an annualized basis, as indicated in the health maintenance organization's most recent annual statement;
- (b) More than ten percent of a health maintenance organization's total cession when it is replaced by one or more unauthorized reinsurers; or
- (c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if a health maintenance organization's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession.

NEW SECTION. Sec. 24. The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (1) The effective date of the nonrenewal, cancellation or revision;
- (2) The description of the transaction with an identification of the initiator;
- (3) The purpose of or reason for the transaction; and
- (4) If applicable, the identity of the replacement reinsurers.

NEW SECTION. Sec. 25. A new section is added to chapter 42.17 RCW to read as follows:

Information provided under sections 1 through 24 of this act is exempt from disclosure under this chapter.

NEW SECTION. Sec. 26. Sections 1 through 6 of this act are each added to chapter 48.05 RCW.

NEW SECTION. Sec. 27. Sections 7 through 12 of this act are each added to chapter 48.43 RCW.

NEW SECTION. Sec. 28. Sections 13 through 18 of this act are each added to chapter 48.44 RCW.

NEW SECTION. Sec. 29. Sections 19 through 24 of this act are each added to chapter 48.46 RCW.

Passed the Senate March 10, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 87

[Substitute Senate Bill 5440]

**FIREARMS—EXPULSION OF STUDENT FOR CARRYING
OR POSSESSING ON SCHOOL GROUNDS**

AN ACT Relating to students with firearms on school property; amending RCW 9.41.280; and adding a new section to chapter 28A.600 RCW.

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

Sec. 1. RCW 9.41.280 and 1994 sp.s. c 7 s 427 are each amended to read as follows:

(1) It is unlawful for a person to carry onto, or to possess on, 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;

(b) Any other dangerous weapon as defined in RCW 9.41.250;

(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;

(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 person violating subsection (1) of this section is guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1)(a) of this section, the person shall lose his or her concealed pistol license, if any. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

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 for an indefinite period of time 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;

(b) Any person engaged in military, law enforcement, or school district security activities;

(c) Any person who is 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;

(d) Any person while the person is participating in a firearms or air gun competition approved by the school or school district;

(e) Any person in possession of a pistol who has been issued a license under RCW 9.41.070, or is exempt from the licensing requirement by RCW 9.41.060, while picking up or dropping off a student;

(f) Any nonstudent at least eighteen years of age 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;

(g) Any nonstudent at least eighteen years of age who is in lawful possession of an unloaded firearm, secured in a vehicle while conducting legitimate business at the school; or

(h) Any law enforcement officer of the federal, state, or local government agency.

(4) Subsections (1) (c) and (d) of this section do not apply to any 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.

(5) Except as provided in subsection (3) (b), (c), (f), and (h) of this section, firearms are not permitted in a public or private school building.

(6) "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.600 RCW to read as follows:

(1) Any elementary or secondary school student who is determined to have carried a firearm onto, or to have possessed a firearm on, public elementary school premises, public school-provided transportation, or areas of facilities while being used exclusively by public schools, shall be expelled from school for not less than one year under RCW 28A.600.010. The superintendent of the school district, educational service district, state school for the deaf, or state school for the blind may modify the expulsion of a student on a case-by-case basis.

(2) For purposes of this section, "firearm" means a firearm as defined in 18 U.S.C. Sec. 921, and a "firearm" as defined in RCW 9.41.010.

(3) This section shall be construed in a manner consistent with the individuals with disabilities education act, 20 U.S.C. Sec. 1401 et seq.

(4) Nothing in this section prevents a public school district, educational service district, the state school for the deaf, or the state school for the blind if it has expelled a student from such student's regular school setting from providing educational services to the student in an alternative setting.

(5) This section does not apply to:

(a) Any student while engaged in military education authorized by school authorities in which rifles are used but not other firearms; or

(b) Any student while involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the rifles of collectors or instructors are handled or displayed but not other firearms; or

(c) Any student while participating in a rifle competition authorized by school authorities.

Passed the Senate March 1, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 88

[Substitute Senate Bill 5764]

REDISTRICTING COMMISSION—SUBMISSION OF REDISTRICTING PLAN

AN ACT Relating to the redistricting commission; and amending RCW 44.05.100.

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

Sec. 1. RCW 44.05.100 and 1983 c 16 s 10 are each amended to read as follows:

(1) Upon approval of a redistricting plan by three of the voting members of the commission, but not later than ~~((January 1st))~~ December 15th of the year ending in ~~((two))~~ one, the commission shall submit the plan to the legislature.

(2) After submission of the plan by the commission, the legislature shall have the next thirty days during any regular or special session to amend the commission's plan. If the legislature amends the commission's plan the legislature's amendment must be approved by an affirmative vote in each house of two-thirds of the members elected or appointed thereto, and may not include more than two percent of the population of any legislative or congressional district.

(3) The plan approved by the commission, with any amendment approved by the legislature, shall be final upon approval of such amendment or after expiration of the time provided for legislative amendment by subsection (2) of

this section whichever occurs first, and shall constitute the districting law applicable to this state for legislative and congressional elections, beginning with the next elections held in the year ending in two. This plan shall be in force until the effective date of the plan based upon the next succeeding federal decennial census or until a modified plan takes effect as provided in RCW 44.05.120(6).

(4) If three of the voting members of the commission fail to approve and submit a plan within the time limitations provided in subsection (1) of this section, the supreme court shall adopt a plan by March 1st of the year ending in two. Any such plan approved by the court is final and constitutes the districting law applicable to this state for legislative and congressional elections, beginning with the next election held in the year ending in two. This plan shall be in force until the effective date of the plan based on the next succeeding federal decennial census or until a modified plan takes effect as provided in RCW 44.05.120(6).

Passed the Senate March 9, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 89

[Senate Bill 5767]

IRRIGATION ASSESSMENT DISTRICTS—REVISED PROVISIONS

AN ACT Relating to municipal irrigation assessment districts; and amending RCW 35.92.220 and 35.92.230.

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

Sec. 1. RCW 35.92.220 and 1965 c 130 s 1 are each amended to read as follows:

(1) A city or town, situated within or served by, an irrigation project, or projects, owned or operated by the United States government, a water users' association, associations, corporation, or corporations or another city or town or towns, where the legislative authority deems it feasible to furnish water for irrigation and domestic purposes, or either, and where the water used for irrigation and domestic purposes or either, is appurtenant or may become appurtenant to the land located within such city or town, may purchase, lease, or otherwise acquire water or water rights for the purpose of furnishing the city or town and the inhabitants thereof with a supply of water for irrigation and domestic purposes, or either; purchase, construct, or otherwise acquire systems and means of distribution and delivery of water within and without the limits of the city or town, or for the delivery of water where the owner of land within the city or town owns a water right appurtenant to his or her land, with full power to maintain, repair, reconstruct, regulate, and control the same, and if private property is necessary for such purposes, the city or town may condemn and purchase or purchase and acquire property, enter into any contract, and order any

and all work to be done (~~which shall be~~) that is necessary to carry out such purposes, and it may do so either by the entire city or town or by assessment districts, consisting of the whole or any portion thereof, as the legislative authority of the city or town may determine.

(2) The legislative authority of any city or town may by ordinance authorize the consolidation of separate irrigation assessment districts, previously established pursuant to this section, for the purposes of construction or rehabilitation of improvements, or of ongoing administration, service, repair, and reconstruction of irrigation systems. The separate irrigation assessment districts to be consolidated need not be adjoining, vicinal, or neighboring. If the legislative authority orders the creation of such consolidated irrigation assessment districts, the money received and on hand from assessments levied within the original districts shall be deposited in a consolidated fund to be used by the municipality for future expenses within the consolidated district.

Sec. 2. RCW 35.92.230 and 1965 c 130 s 2 are each amended to read as follows:

For the purpose of paying for a water right purchased by the city or town from the United States government where the purchase price has not been fully paid; paying annual maintenance or annual rental charge to the United States government or any corporation or individual furnishing the water for irrigation and domestic purposes, or either; paying assessments made by any water users' association; paying the cost of constructing or acquiring any system or means of distribution or delivery of water for (~~said~~) such purposes; and for the upkeep, repair, reconstruction, operation, and maintenance thereof; accumulating reasonable operating fund reserves to pay for system upkeep, repair, operation, and maintenance, in such amount as is determined by the city or town legislative authority; accumulating reasonable capital fund reserves in an amount not to exceed the total estimated cost of system construction, reconstruction, or refurbishment, over such period of time as is determined by the city or town legislative authority; and for any expense incidental to (~~said~~) such purposes, the city or town may levy and collect special assessments against the property within any district created pursuant to RCW 35.92.220 (~~as now or hereafter amended~~), to pay the whole or any part of any such costs and expenses.

Passed the Senate March 10, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 90

[Substitute Senate Bill 5769]

UNEMPLOYMENT COMPENSATION OVERPAYMENTS—RECOVERY OF

AN ACT Relating to recovery of unemployment insurance overpayments; amending RCW 50.20.190; creating new sections; and declaring an emergency.

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

Sec. 1. RCW 50.20.190 and 1993 c 483 s 13 are each amended to read as follows:

(1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: **PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year ((#)) for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.**

(2) The commissioner may waive an overpayment if the commissioner finds that said overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: **PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.**

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: **PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, said determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last**

known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee of five dollars. The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of their monthly payments either partially or in full. The interest penalty shall be used to fund detection and recovery of overpayment and collection activities.

NEW SECTION. Sec. 2. 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. 3. This act applies to job separations occurring after July 1, 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 Senate March 11, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 91

[Substitute Senate Bill 5804]

POWER OF APPOINTMENT—RELEASE OF

AN ACT Relating to release of power of appointment; amending RCW 11.95.030; and repealing RCW 11.95.050.

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

Sec. 1. RCW 11.95.030 and 1985 c 30 s 33 are each amended to read as follows:

(1) In order to be effective as a release of a power, the instrument of release must be delivered to any trustee or co-trustee of the property, and the person holding the property, to which the power relates. ~~((Delivery of))~~

(2) In addition to the delivery required under subsection (1) of this section, a copy of the instrument of release may be ~~((made to the secretary of state))~~ published in a legal newspaper of general circulation in the county in which all or the greatest portion of the property is located at least once within thirty days of the delivery required under subsection (1) of this section, which shall from the time of ~~((delivery))~~ publication constitute notice of the release to all other persons.

NEW SECTION. **Sec. 2.** RCW 11.95.050 and 1985 c 30 s 35 are each repealed.

Passed the Senate March 9, 1995.
Passed the House April 6, 1995.
Approved by the Governor April 18, 1995.
Filed in Office of Secretary of State April 18, 1995.

CHAPTER 92

[Engrossed Substitute Senate Bill 5820]

**UNAUTHORIZED USE OF TELECOMMUNICATION OR
SUBSCRIPTION VIDEO SERVICES**

AN ACT Relating to unauthorized use of telecommunication and subscription video services; amending RCW 9A.56.010, 9A.56.220, 9A.56.230, 9A.56.250, and 9A.82.010; adding new sections to chapter 9A.56 RCW; and prescribing penalties.

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

Sec. 1. RCW 9A.56.010 and 1987 c 140 s 1 are each amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(2) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(3) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(4) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed.

(5) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(6) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(7) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, pledgee, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where such use is unauthorized by the partnership agreement;

(8) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(9) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(10) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(11) "Stolen" means obtained by theft, robbery, or extortion;

(12) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

(13) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

(14) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;

(15) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and

said series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

~~((+3))~~ (16) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

~~((+4))~~ (17) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle.

Sec. 2. RCW 9A.56.220 and 1989 c 11 s 1 are each amended to read as follows:

(1) A person is guilty of theft of ~~((eable))~~ subscription television services if~~((+~~

~~((a))~~, with intent to avoid payment of the lawful charge ~~((for any communication))~~ of a subscription television service ~~((of a cable system))~~, he or she:

~~((i))~~ ~~Tampers with the equipment of the cable system, whether by mechanical, electrical, acoustical, or other means; or~~

~~((ii))~~ ~~Knowingly misrepresents a material fact; or~~

~~((iii))~~ ~~Uses any other artifice, trick, deception, code, or other device; and~~

~~((b))~~ ~~He or she wrongfully obtains cable communication services for himself or herself or another.~~

~~((2))~~ ~~RCW 9A.56.220 through 9A.56.250 do not apply to the interception or receipt by any individual or the assisting (including the manufacture or sale), of such interception or receipt of any satellite transmitted programming for private use;))~~

(a) Obtains or attempts to obtain subscription television service from a subscription television service company by trick, artifice, deception, use of a device or decoder, or other fraudulent means without authority from the company providing the service;

(b) Assists or instructs a person in obtaining or attempting to obtain subscription television service without authority of the company providing the service;

(c) Makes or maintains a connection or connections, whether physical, electrical, mechanical, acoustical, or by other means, with cables, wires, components, or other devices used for the distribution of subscription television services without authority from the company providing the services;

(d) Makes or maintains a modification or alteration to a device installed with the authorization of a subscription television service company for the purpose of interception or receiving a program or other service carried by the company that the person is not authorized by the company to receive; or

(e) Possesses without authority a device designed in whole or in part to receive subscription television services offered for sale by the subscription television service company, regardless of whether the program or services are encoded, filtered, scrambled, or otherwise made unintelligible, or to perform or facilitate the performance of any other acts set out in (a) through (d) of this subsection for the reception of subscription television services without authority.

~~((3))~~ (2) Theft of ((eable)) subscription television services is a gross misdemeanor.

Sec. 3. RCW 9A.56.230 and 1985 c 430 s 2 are each amended to read as follows:

(1) A person is guilty of unlawful sale of ~~((eable))~~ subscription television services if, with intent to avoid payment or to facilitate the avoidance of payment of the lawful charge for any ~~((communications service of a cable system))~~ subscription television service, he or she ~~((offers for sale or otherwise makes available any telecommunications decoder or descrambler that defeats a mechanism of electronic signal encryption, or that restricts delivery of individually addressed switching imposed by the cable system-)),~~ without authorization from the subscription television service company:

(a) Publishes or advertises for sale a plan for a device that is designed in whole or in part to receive subscription television or services offered for sale by the subscription television service company, regardless of whether the programming or services are encoded, filtered, scrambled, or otherwise made unintelligible;

(b) Advertises for sale or lease a device or kit for a device designed in whole or in part to receive subscription television services offered for sale by the subscription television service company, regardless of whether the programming or services are encoded, filtered, scrambled, or otherwise made unintelligible; or

(c) Manufactures, imports into the state of Washington, distributes, sells, leases, or offers for sale or lease a device, plan, or kit for a device designed in whole or in part to receive subscription television services offered for sale by the subscription television service company, regardless of whether the programming or services are encoded, filtered, scrambled, or otherwise made unintelligible.

(2) Unlawful sale of ((eable)) subscription television services is a ((gross misdemeanor)) class C felony.

Sec. 4. RCW 9A.56.250 and 1985 c 430 s 4 are each amended to read as follows:

(1) In addition to the criminal penalties provided in RCW 9A.56.220 and 9A.56.230, there is created a civil cause of action for theft of ~~((eable))~~

subscription television services and for unlawful sale of ((eable)) subscription television services.

~~(2) ((The prevailing party may recover actual damages, reasonable attorneys' fees, and costs.~~

~~(3)) A person who sustains injury to his or her person, business, or property by an act described in RCW 9A.56.220 or 9A.56.230 may file an action in superior court for recovery of damages and the costs of the suit, including reasonable investigative and attorneys' fees and costs.~~

~~(3) Upon finding a violation of RCW 9A.56.220 or 9A.56.230, in addition to the remedies described in this section, the court may impose a civil penalty not exceeding twenty-five thousand dollars.~~

~~(4) The superior court may grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain violations of RCW 9A.56.220 and 9A.56.230.~~

Sec. 5. RCW 9A.82.010 and 1994 c 218 s 17 are each amended to read as follows:

Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(2) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(3) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(4) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(5) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(6) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(7) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(8) "Dealer in property" means a person who buys and sells property as a business.

(9) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(10) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(11) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(12) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(13) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(14) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and 9A.56.080;

(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;

(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in sections 6 and 7 of this act;

~~(h)~~ (h) Child selling or child buying, as defined in RCW 9A.64.030;

~~((g))~~ (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;

~~((h))~~ (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

~~((i))~~ (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

~~((j))~~ (l) Extortionate extension of credit, as defined in RCW 9A.82.020;

~~((k))~~ (m) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;

~~((h))~~ (n) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;

~~((m))~~ (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;
~~((n))~~ (p) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;

~~((o))~~ (q) Trafficking in stolen property, as defined in RCW 9A.82.050;

~~((p))~~ (r) Leading organized crime, as defined in RCW 9A.82.060;

~~((q))~~ (s) Money laundering, as defined in RCW 9A.83.020;

~~((r))~~ (t) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;

~~((s))~~ (u) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

~~((t))~~ (v) Promoting pornography, as defined in RCW 9.68.140;

~~((n))~~ (w) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

~~((v))~~ (x) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

~~((w))~~ (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

~~((x))~~ (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

~~((y))~~ (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

~~((z))~~ (bb) A pattern of equity skimming, as defined in RCW 61.34.020; or

~~((aa))~~ (cc) Commercial telephone solicitation in violation of RCW 19.158.040(1).

(15) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(16) "Records" means any book, paper, writing, record, computer program, or other material.

(17) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer

printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(18) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

(19)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest shall be considered to be located where the real property owned by the trustee is located.

(20) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(21)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under subsection (21)(a) (i) or (ii) of this section.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

NEW SECTION. Sec. 6. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of theft of telecommunication services if he or she knowingly and with intent to avoid payment:

(a) Uses a telecommunication device to obtain telecommunication services without having entered into a prior agreement with a telecommunication service provider to pay for the telecommunication services; or

(b) Possesses a telecommunication device.

(2) Theft of telecommunication services is a class C felony.

NEW SECTION. Sec. 7. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of unlawful manufacture of a telecommunication device if he or she knowingly and with intent to avoid payment or to facilitate avoidance of payment:

(a) Manufactures, produces, or assembles a telecommunication device;

(b) Modifies, alters, programs, or reprograms a telecommunication device to be capable of acquiring or of facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider; or

(c) Writes, creates, or modifies a computer program that he or she knows is thereby capable of being used to manufacture a telecommunication device.

(2) Unlawful manufacture of a telecommunication device is a class C felony.

NEW SECTION. Sec. 8. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of unlawful sale of a telecommunication device if he or she sells, leases, exchanges, or offers to sell, lease, or exchange:

(a) A telecommunication device, knowing that the purchaser, lessee, or recipient, or a third person, intends to use the device to avoid payment or to facilitate avoidance of payment for telecommunication services; or

(b) Any material, including data, computer software, or other information and equipment, knowing that the purchaser, lessee, or recipient, or a third person, intends to use the material to avoid payment or to facilitate avoidance of payment for telecommunication services.

(2) Unlawful sale of a telecommunication device is a class C felony.

NEW SECTION. Sec. 9. A new section is added to chapter 9A.56 RCW to read as follows:

(1) In addition to the criminal penalties provided in sections 6 through 8 of this act, there is created a civil cause of action for theft of telecommunication services, for unlawful manufacture of a telecommunication device, and for unlawful sale of a telecommunication device.

(2) A person who sustains injury to his or her person, business, or property by an act described in section 6, 7, or 8 of this act may file an action in superior court for recovery of damages and the costs of the suit, including reasonable investigative and attorneys' fees and costs.

(3) Upon finding a violation of section 6, 7, or 8 of this act, in addition to the remedies described in this section, the court may impose a civil penalty not exceeding twenty-five thousand dollars.

(4) The superior court may grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain violations of sections 6 through 8 of this act.

Passed the Senate March 15, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 93

[Substitute Senate Bill 5835]

RESTRAINING ORDERS—REVISED PROVISIONS

AN ACT Relating to restraining orders; amending RCW 26.09.050 and 26.10.040; and reenacting and amending RCW 10.31.100.

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

Sec. 1. RCW 10.31.100 and 1993 c 209 s 1 and 1993 c 128 s 5 are each reenacted and 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 (10) 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, 26.09.050, 26.09.060, 26.10.040, 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~~) 88.12.025 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 RCW 9A.50.020 may arrest such person.

(10) 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).

(11) 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.

(12) 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. 2. RCW 26.09.050 and 1994 sp.s. c 7 s 451 are each amended to read as follows:

(1) In entering a decree of dissolution of marriage, legal separation, or declaration of invalidity, the court shall determine the marital status of the parties, make provision for a parenting plan for any minor child of the marriage, make provision for the support of any child of the marriage entitled to support, consider or approve provision for the maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders including the provisions contained in RCW 9.41.800, make provision for the issuance within this action of the restraint provisions of a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW, and make provision for the change of name of any party.

(2) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS

TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.09 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(3) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section, in addition to the law enforcement information sheet or proof of service of the order, be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

Sec. 3. RCW 26.10.040 and 1994 sp.s. c 7 s 453 are each amended to read as follows:

In entering an order under this chapter, the court shall consider, approve, or make provision for:

(1) Child custody, visitation, and the support of any child entitled to support;

(2) The allocation of the children as a federal tax exemption; (~~and~~)

(3) Any necessary continuing restraining orders, including the provisions contained in RCW 9.41.800;

(4) A domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080;

(5) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.10 RCW AND WILL SUBJECT A VIOLATOR TO ARREST;

(6) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section, in addition to the law enforcement information sheet or proof of service of the order, be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

Passed the Senate March 15, 1995.
Passed the House April 6, 1995.
Approved by the Governor April 18, 1995.
Filed in Office of Secretary of State April 18, 1995.

CHAPTER 94

[Senate Bill 5857]

PUBLIC WORKS—NAMING OF SUBCONTRACTORS

AN ACT Relating to public works subletting and subcontracting; and amending RCW 39.30.060.

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

Sec. 1. RCW 39.30.060 and 1994 c 91 s 1 are each amended 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 one hour after the published bid submittal time, the names of the subcontractors whose subcontract amount is more than ten percent of the ~~((contract))~~ bid 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.

Passed the Senate March 15, 1995.
Passed the House April 6, 1995.
Approved by the Governor April 18, 1995.
Filed in Office of Secretary of State April 18, 1995.

CHAPTER 95

[Senate Bill 5871]

BOARD OF PLUMBING—MEMBERSHIP

AN ACT Relating to the board of plumbers; amending RCW 18.106.110; and declaring an emergency.

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

Sec. 1. RCW 18.106.110 and 1975-'76 2nd ex.s. c 34 s 56 are each amended to read as follows:

(1) There is created a state advisory board of plumbers, to be composed of three members appointed by the governor. One member shall be a journeyman plumber, one member shall be a person conducting a plumbing business, and one

member from the general public who is familiar with the business and trade of plumbing.

(2) ~~((The initial terms of the members of the advisory board shall be one, two, and three years respectively as set forth in subsection (1) of this section.))~~ The term of the journeyman plumber shall expire July 1, 1995; the term of the person conducting a plumbing business shall expire July 1, 1996; and the term of the public member shall expire July 1, 1997. Thereafter, upon the expiration of said terms, the governor shall appoint a new member to serve for a period of three years. However, to ensure that the board can continue to act, a member whose term expires shall continue to serve until his or her replacement is appointed. In the case of any vacancy on the board for any reason, the governor shall appoint a new member to serve out the term of the person whose position has become vacant.

(3) The advisory board shall carry out all the functions and duties enumerated in this chapter, as well as generally advise the department on all matters relative to this chapter.

(4) Each member of the advisory board shall receive travel expenses in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day in which such member is actually engaged in attendance upon the meetings of the advisory board.

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 March 11, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 96

[Substitute Senate Bill 5918]

MENTAL HEALTH SERVICES DELIVERY SYSTEM—ACCOUNTABILITY

AN ACT Relating to a single system of accountability for the mental health service delivery system; amending RCW 71.24.400, 71.24.405, and 71.24.415; reenacting and amending RCW 71.24.025; and declaring an emergency.

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

Sec. 1. RCW 71.24.400 and 1994 c 259 s 1 are each amended to read as follows:

The legislature finds that the current complex set of federal, state, and local rules and regulations, audited and administered at multiple levels ~~((of))~~, which affect the community mental health service delivery system, focus primarily on the process of providing mental health services and do not sufficiently address consumer and system outcomes. To this extent, the legislature finds that the

intent of RCW 71.24.015 related to reduced administrative layering, duplication, and reduced administrative costs need much more aggressive action.

Sec. 2. RCW 71.24.405 and 1994 c 259 s 2 are each amended to read as follows:

The department of social and health services shall establish a single comprehensive and collaborative project within regional support networks and with local mental health service providers aimed at creating innovative and streamlined community mental health service delivery systems, in order to carry out the purposes set forth in RCW 71.24.400 and to capture the diversity of the community mental health service delivery system.

The project must accomplish the following:

(1) Identification, review, and cataloging of all rules, regulations, duplicative administrative and monitoring functions, and other requirements that currently lead to inefficiencies in the community mental health service delivery system and, if possible, eliminate the requirements;

(2) The systematic and incremental development of a single system of accountability for all ~~((appropriated funds used to provide))~~ federal, state, and local funds provided to the community mental health ~~((services. Assessment must be made regarding the feasibility of also including))~~ service delivery system. Systematic efforts should be made to include federal and local funds into the single system of accountability;

(3) The elimination of process regulations and related contract and reporting requirements. In place of the regulations and requirements, a set of outcomes for mental health adult and children clients according to chapter 71.24 RCW must be used to measure the performance of mental health service providers and regional support networks. Such outcomes shall focus on stabilizing out-of-home and hospital care, increasing stable community living, increasing age-appropriate activities, achieving family and consumer satisfaction with services, and system efficiencies;

(4) Evaluation of the feasibility of contractual agreements between the department of social and health services and regional support networks and mental health service providers that link financial incentives to the success or failure of mental health service providers and regional support networks to meet outcomes established for mental health service clients;

(5) The involvement of mental health consumers and their representatives in the pilot projects. Mental health consumers and their representatives will be involved in the development of outcome standards for mental health clients and other related aspects of the pilot projects; and

(6) An independent evaluation component to measure the success of the projects.

Sec. 3. RCW 71.24.415 and 1994 c 259 s 4 are each amended to read as follows:

To carry out the purposes specified in RCW 71.24.400, the department of social and health services is encouraged to utilize its authority to immediately eliminate any unnecessary rules, regulations, standards, or contracts, to immediately eliminate duplication of audits or any other unnecessarily duplicated functions, and to seek any waivers of federal or state rules or regulations necessary to achieve the purpose of streamlining the community mental health service delivery system and infusing it with incentives that reward efficiency, positive outcomes for clients, and quality services.

Sec. 4. RCW 71.24.025 and 1994 sp.s. c 9 s 748 and 1994 c 204 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) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020(2) or, in the case of a child, as defined in RCW 71.34.020(12);

(b) Being gravely disabled as defined in RCW 71.05.020(1) or, in the case of a child, as defined in RCW 71.34.020(8); or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020(3) or, in the case of a child, as defined in RCW 71.34.020(11).

(2) "Available resources" means those funds which shall be appropriated under this chapter by the legislature during any biennium for the purpose of providing community mental health programs under RCW 71.24.045. When regional support networks are established or after July 1, 1995, "available resources" means federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(d).

(3) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(4) "Child" means a person under the age of eighteen years.

(5) "Chronically mentally ill adult" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than

twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(6) "Severely emotionally disturbed child" means an infant or child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from various public sources including: (a) Federal medicare, medicaid, or early periodic screening, diagnostic, and treatment programs; or (b) state funds from the division of mental health division of children and famil serviges division of alcohol and substance abuse, or division of vocational rehabilitation of the department of social and health services.

(8) "Community mental health program" means all mental health services established by a county authority. After July 1, 1995, or when the regional support networks are established, "community mental health program" means all activities or programs using available resources.

~~((8))~~ (9) "Community support services" means services for acutely mentally ill persons, chronically mentally ill adults, and severely emotionally disturbed children and includes: (a) Discharge planning for clients leaving state mental hospitals, other acute care inpatient facilities, inpatient psychiatric facilities for persons under twenty-one years of age, and other children's mental health residential treatment facilities; (b) sufficient contacts with clients, families, schools, or significant others to provide for an effective program of community

maintenance; and (c) medication monitoring. After July 1, 1995, or when regional support networks are established, for adults and children "community support services" means services authorized, planned, and coordinated through resource management services including, at least, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, other services determined by regional support networks, and maintenance of a patient tracking system for chronically mentally ill adults and severely emotionally disturbed children.

~~((9))~~ (10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

~~((10))~~ (11) "Department" means the department of social and health services.

~~((11))~~ (12) "Mental health services" means community services pursuant to RCW 71.24.035(5)(b) and other services provided by the state for the mentally ill. When regional support networks are established, or after July 1, 1995, "mental health services" shall include all services provided by regional support networks.

~~((12))~~ (13) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (5), (6), and ~~((16))~~ (17) of this section.

~~((13))~~ (14) "Regional support network" means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary pursuant to this chapter.

~~((14))~~ (15) "Residential services" means a facility or distinct part thereof which provides food and shelter, and may include treatment services.

When regional support networks are established, or after July 1, 1995, for adults and children "residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services

as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

~~((15))~~ (16) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for acutely mentally ill adults and children, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network at their sole discretion to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services and their individual service plan to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

~~((16))~~ (17) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to oneself or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

~~((17))~~ (18) "Secretary" means the secretary of social and health services.

~~((18))~~ (19) "State minimum standards" means: (a) Minimum requirements for delivery of mental health services as established by departmental rules and necessary to implement this chapter, including but not limited to licensing service providers and services; (b) minimum service requirements for licensed service providers for the provision of mental health services as established by departmental rules pursuant to chapter 34.05 RCW as necessary to implement this chapter, including, but not limited to: Qualifications for staff providing services directly to mentally ill persons; the intended result of each service; and the rights and responsibilities of persons receiving mental health services pursuant to this

chapter; (c) minimum requirements for residential services as established by the department in rule based on clients' functional abilities and not solely on their diagnoses, limited to health and safety, staff qualifications, and program outcomes. Minimum requirements for residential services are those developed in collaboration with consumers, families, counties, regulators, and residential providers serving the mentally ill. Minimum requirements encourage the development of broad-range residential programs, including integrated housing and cross-systems programs where appropriate, and do not unnecessarily restrict programming flexibility; and (d) minimum standards for community support services and resource management services, including at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers.

~~((+9))~~ (20) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest.

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 Senate March 10, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 97

[Substitute Senate Bill 6026]

WASHINGTON STATE GROWN AGRICULTURAL COMMODITIES

AN ACT Relating to Washington state agricultural commodities; and adding a new section to chapter 15.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 15.04 RCW to read as follows:

(1) Before being offered for retail sale in this state, any agricultural commodity, defined under RCW 15.66.010, that was grown or raised in this state may be advertised, labeled, described, sold, marked, or otherwise held out, with the words "Washington state grown," or other similar language indicating that the product is from Washington state grown or raised agricultural commodities.

(2) An agricultural commodity that was not grown or raised in this state and packages of that product shall not be advertised, labeled, described, sold, marked, or otherwise held out as "Washington state grown," or in any way as to imply that such product is a Washington state grown or raised agricultural commodity.

(3) It is unlawful for any person to violate this section.

(4) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. A violation of this section 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.

Passed the Senate March 9, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 18, 1995.

Filed in Office of Secretary of State April 18, 1995.

CHAPTER 98

[Initiative 164]

PRIVATE PROPERTY REGULATORY FAIRNESS ACT

AN ACT Relating to regulation of private property; [and] adding a new chapter to Title 64 RCW.

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

NEW SECTION. Sec. 1. This act is intended to provide remedies to property owners in addition to any constitutional rights under the state and/or federal constitutions and is not intended to restrict or replace any constitutional rights.

NEW SECTION. Sec. 2. This act shall be known as the private property regulatory fairness act.

NEW SECTION. Sec. 3. A regulation of private property or restraint of land use by a governmental entity is prohibited unless a statement containing a full analysis of the total economic impact in private property of such regulation or restraint is prepared by the entity and made available to the public at least thirty days prior to adoption of the regulation or imposition of the restraint. Such statement shall identify the manner in which the proposed action will substantially advance the purpose of protecting public health and safety against identified public health or safety risks created by the use of private property, and analyze the economic impact of all reasonable alternatives to the regulation or restraint. Should the governmental entity choose to adopt a proposed regulation or restraint on the use private property, the governmental entity shall adopt the regulation or restraint that has the least possible impact on private property and still accomplishes the necessary public purpose.

NEW SECTION. Sec. 4. (1) A portion or parcel of private property shall be considered to have been taken for general public use when:

(a) a governmental entity regulates or imposes a restraint of land use on such portion or parcel of property for public benefit including wetlands, fish or wildlife habitat, buffer zone, or other public benefit designations; and

(b) no public nuisance will be created absent the regulation; and

(2) When private property is taken for general public use, the regulating agency or jurisdiction shall pay full compensation of reduction in value to the owner, or the use of the land by the owner may not be restricted because of the regulation or restraint. The jurisdiction may not require waiving this compensation as a condition of approval of use or another permit, nor as a condition for subdivision of land.

(3) Compensation must be paid to the owner of a private property within three months of the adoption of a regulation or restraint which results in a taking for general public use.

(4) A governmental entity may not deflate the value of property by suggesting or threatening a designation to avoid full compensation to the owner.

(5) A governmental entity that places restrictions on the use of public or private property which deprive a landowner of access to his or her property must also provide alternative access to the property at the governmental entity's expense, or purchase the inaccessible property.

(6) The assessor shall adjust property valuation for tax purposes and notify the owner of the new tax valuation, which must be reflected and identified in the next tax assessment notice.

(7) The state is responsible for the compensation liability of other governmental entities for any action which restricts the use of property when such action is mandated by state law or any state agency.

(8) Claims for compensation as a result of a taking of private property under this act must be brought within the time period specified in RCW 4.16.020.

NEW SECTION. Sec. 6. No governmental entity may require any private property owner to provide or pay for any studies, maps, plans, or reports used in decisions to consider restricting the use of private property for public use.

NEW SECTION. Sec. 7. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Full compensation" means the reduction in the fair market value of the portion or parcel of property taken for general public use which is attributable to the regulation or restraint. Such reduction shall be measured as of the date of adoption of the regulation or imposition of restraint on the use of private property.

(2) "Governmental entity" means Washington state, state agencies, agencies and commissions funded fully or partially by the state, counties, cities, and other political subdivisions.

(3) "Private property" means -

(a) land;

(b) any interest in land or improvements thereon;

(c) any proprietary water right;

(d) Any crops, forest products, or resources capable of being harvested or extracted that is owned by a non-governmental entity and is protected by either the Fifth or Fourteenth Amendments to the U.S. Constitution or the Washington State Constitution.

(4) "Restraint of land use" means any action, requirement, or restriction by a governmental entity, other than actions to prevent or abate public nuisances, that limits the use or development or private property.

NEW SECTION. Sec. 8. This act may be enforced in Superior Court against any governmental entity which fails to comply with the provisions of this act by any owner of property subject to the jurisdiction of such entity. Any prevailing plaintiff is entitled to recover the costs of litigation, including reasonable attorney's fees.

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.

NEW SECTION. Sec. 10. Sections 1 through 8 of this act shall constitute a new chapter in Title 64 RCW.

Passed the House February 15, 1995.

Passed the Senate April 18, 1995.

Originally filed in Office of Secretary of State August 18, 1994.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 99

[Engrossed Substitute House Bill 1452]

METROPOLITAN PARK DISTRICTS—PROPERTY TAX—PROTECTION OF PORTION OF TAXES FROM PRORATIONING BY BALLOT PROPOSITION

AN ACT Relating to allowing voters to approve ballot propositions protecting a portion of metropolitan park district property taxes from prorating; amending RCW 84.52.010 and 84.52.043; and adding a new section to chapter 84.52 RCW.

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

NEW SECTION. Sec. I. A new section is added to chapter 84.52 RCW to read as follows:

A metropolitan park district with a population of one hundred fifty thousand or more may submit a ballot proposition to voters of the district authorizing the protection of the district's tax levy from prorating under RCW 84.52.010(2) by imposing all or any portion of the district's twenty-five cent per thousand dollars of assessed valuation tax levy outside of the five dollar and ninety cent per thousand dollar of assessed valuation limitation established under RCW 84.52.043(2), if those taxes otherwise would be prorated under RCW 84.52.010(2)(c), for taxes imposed in any year on or before the first day of

January six years after the ballot proposition is approved. A simple majority vote of voters voting on the proposition is required for approval.

Sec. 2. RCW 84.52.010 and 1994 c 124 s 36 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; 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, the portion of the levy by a metropolitan park district that was protected under section 1 of this act, and 84.52.105, the combined rate(=) of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows: (a) The portion of the levy by a metropolitan park district that is protected under section 1 of this act shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; (b) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230 (~~and~~), 84.52.105, 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 rate(~~= of regular property tax levies~~) no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and (c) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no

longer exceeds one percent of the true and fair value of any property or eliminated.

(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. 3. RCW 84.52.043 and 1993 c 337 s 3 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) 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; (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 RCW 84.52.105; and (f) the portions of levies by metropolitan park districts that are protected under section 1 of this act.

Passed the House February 22, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 100

[House Bill 1059]

LIQUOR ACT—ENFORCEMENT PROVISIONS REVISED

AN ACT Relating to improvements to the enforcement provisions of the Washington state liquor act; amending RCW 66.12.120; adding a new section to chapter 66.44 RCW; repealing 1990 c 125 s 3 (uncodified); and declaring an emergency.

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

Sec. 1. RCW 66.12.120 and 1975 1st ex.s. c 173 s 3 are each amended to read as follows:

Notwithstanding any other provision of Title 66 RCW, a person twenty-one years of age or over may ~~((be authorized by the board to))~~, free of tax and markup, for personal or household use, bring into the state of Washington from another state no more than once per calendar month up to two liters of spirits or wine or two hundred eighty-eight ounces of beer. Additionally, such person may be authorized by the board to bring into the state of Washington from another state a reasonable amount of alcoholic beverages in excess of that provided in this section for personal or household use only upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a state liquor store. The board shall adopt appropriate

regulations pursuant to chapter 34.05 RCW for the purpose of carrying into effect the provisions of this section.

NEW SECTION. Sec. 2. A new section is added to chapter 66.44 RCW to read as follows:

Licensees holding nonretail class liquor licenses are permitted to allow their employees between ages of eighteen and twenty-one to stock, merchandise, and handle beer or wine on or about the nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises.

NEW SECTION. Sec. 3. 1990 c 125 s 3 (uncodified) is repealed.

NEW SECTION. Sec. 4. Section 3 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 March 7, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 101

[Substitute House Bill 1062]

USE OF JUVENILE SERIOUS VIOLENT OFFENSES AS CRIMINAL HISTORY FOR ADULT SENTENCING

AN ACT Relating to using juvenile serious violent offenses as criminal history for purposes of adult sentencing; amending RCW 9.94A.030; and reenacting and amending RCW 9.94A.360.

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

Sec. 1. RCW 9.94A.360 and 1992 c 145 s 10 and 1992 c 75 s 4 are each reenacted and amended to read as follows:

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Except as provided in subsection (4) of this section, class A and sex prior felony convictions shall always be included in the offender score. Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of

judgment and sentence, the offender had spent ten consecutive years in the community without being convicted of any felonies. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without being convicted of any felonies. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without being convicted of any serious traffic or felony traffic offenses. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.

(4) Always include juvenile convictions for sex offenses and serious violent offenses. Include other class A juvenile felonies only if the offender was 15 or older at the time the juvenile offense was committed. Include other class B and C juvenile felony convictions only if the offender was 15 or older at the time the juvenile offense was committed and the offender was less than 23 at the time the offense for which he or she is being sentenced was committed.

(5) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(6) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(a) Prior adult offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall be counted as one offense or as separate offenses, and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used;

(b) Juvenile prior convictions entered or sentenced on the same date shall count as one offense, the offense that yields the highest offender score, except for juvenile prior convictions for violent offenses with separate victims, which shall count as separate offenses; and

(c) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(7) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense.

(8) If the present conviction is for a nonviolent offense and not covered by subsection (12) or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(9) If the present conviction is for a violent offense and not covered in subsection (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Murder 1 or 2, Assault 1, Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count three points for prior adult and juvenile convictions for crimes in these categories, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(11) If the present conviction is for Burglary 1, count prior convictions as in subsection (9) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(12) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense or serious traffic offense, count one point for each adult and 1/2 point for each juvenile prior conviction.

(13) If the present conviction is for a drug offense count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (9) of this section if the current drug offense is violent, or as in subsection (8) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, Willful Failure to Return from Work Release, RCW 72.65.070, or Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (8) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (8) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for an offense committed while the offender was under community placement, add one point.

Sec. 2. RCW 9.94A.030 and 1994 c 261 s 16 are each 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 16.52.200(6) or 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 RCW 38.52.430.

(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 serious violent 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(9); (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 and serious violent offenses.

(21) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault;

(r) 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;

(s) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under this section;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.125;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection.

(22) "Nonviolent offense" means an offense which is not a violent offense.

(23) "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.

(24) "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.

(25) "Persistent offender" is an offender who:

(a) Has been convicted in this state of any felony considered a most serious offense; and

(b) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

(26) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(27) "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.

(28) "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.

(29) "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.

(30) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(31) "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.

(32) "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.

(33) "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.

(34) "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.

(35) "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.

(36) "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.

(37) "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 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 (31) of this section are not eligible for the work crew program.

(38) "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.

(39) "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.

(40) "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 8, 1995.
 Passed the Senate April 5, 1995.
 Approved by the Governor April 19, 1995.
 Filed in Office of Secretary of State April 19, 1995.

CHAPTER 102

[House Bill 1068]

PORT DISTRICT DEBT LIMIT PRESERVATION

AN ACT Relating to preserving port district debt limits; and amending RCW 53.36.030.

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

Sec. 1. RCW 53.36.030 and 1991 c 314 s 29 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, a port district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor not exceeding an amount, together with any existing indebtedness of the district not authorized by the voters, of one-fourth of one percent of the value of the taxable property in the district.

(b) Port districts having less than eight hundred million dollars in value of taxable property during 1991 may at any time contract indebtedness or borrow money for port district purposes and may issue general obligation bonds therefor not exceeding an amount, combined with existing indebtedness of the district not authorized by the voters, of three-eighths of one percent of the value of the taxable property in the district. Prior to contracting for any indebtedness authorized by this subsection (1)(b), the port district must have a comprehensive plan for harbor improvements or industrial development and a long-term financial plan approved by the department of community, trade, and economic development. The department of community, trade, and economic development is immune from any liability for its part in reviewing or approving port district's improvement or development plans, or financial plans. Any indebtedness authorized by this subsection (1)(b) may be used only to acquire or construct a facility, and, prior to contracting for such indebtedness, the port district must have a lease contract for a minimum of five years for the facility to be acquired or constructed by the debt.

(2) With the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, a port district may contract

indebtedness or borrow money for district purposes and may issue general obligation bonds therefor provided the total indebtedness of the district at any such time shall not exceed three-fourths of one percent of the value of the taxable property in the district.

(3) In addition to the indebtedness authorized under subsections (1) and (2) of this section, port districts having less than two hundred million dollars in value of taxable property and operating a municipal airport may at any time contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor not exceeding an additional one-eighth of one percent of the value of the taxable property in the district without authorization by the voters; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor for an additional three-eighths of one percent provided the total indebtedness of the district for all port purposes at any such time shall not exceed one and one-fourth percent of the value of the taxable property in the district.

(4) Any port district may issue general district bonds evidencing any indebtedness, payable at any time not exceeding fifty years from the date of the bonds. Any contract for indebtedness or borrowed money authorized by RCW 53.36.030(1)(b) shall not exceed twenty-five years. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(5) Elections required under this section shall be held as provided in RCW 39.36.050.

(6) For the purpose of this section, "indebtedness of the district" shall not include any debt of a county-wide district with a population less than twenty-five hundred people when the debt is secured by a mortgage on property leased to the federal government; and the term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015.

Passed the House February 17, 1995.

Passed the Senate April 6, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 103

[House Bill 1213]

EMERGENCY MEDICAL SERVICE PERSONNEL—TRAINING—IMMUNITY FROM LIABILITY

AN ACT Relating to training of emergency service medical personnel; amending RCW 18.71.210 and 18.71.215; and declaring an emergency.

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

Sec. 1. RCW 18.71.210 and 1989 c 260 s 4 are each amended to read as follows:

No act or omission of any physician's trained mobile intensive care paramedic, intravenous therapy technician, or airway management technician, as defined in RCW 18.71.200 as now or hereafter amended, any emergency medical technician or first responder as defined in RCW 18.73.030, done or omitted in good faith while rendering emergency medical service under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:

- (1) The trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder;
- (2) The medical program director;
- (3) The supervising physician(s);
- (4) Any hospital, the officers, members of the staff, nurses, or other employees of a hospital;
- (5) Any training agency or training physician(s);
- (6) Any licensed ambulance service; or
- (7) Any federal, state, county, city or other local governmental unit or employees of such a governmental unit.

This section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder, as the case may be.

This section shall ~~((not relieve a physician or a hospital of any duty otherwise imposed by law upon such physician or hospital for the designation or training of a physician's trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder, nor shall this section relieve any individual or other entity listed in this section of any duty otherwise imposed by law for the provision or maintenance of equipment to be used by the physician's trained mobile intensive care paramedics, intravenous therapy technicians, airway management technicians, emergency medical technicians, or first responders))~~ apply also, as to the entities and personnel described in subsections (1) through (7) of this section, to any act or omission committed or omitted in good faith by such entities or personnel in rendering services at the request of an approved medical program director in the training of emergency service medical personnel for certification or recertification pursuant to this chapter.

This section shall not apply to any act or omission which constitutes either gross negligence or willful or wanton misconduct.

Sec. 2. RCW 18.71.215 and 1990 c 269 s 20 are each amended to read as follows:

The department of health shall defend and hold harmless approved medical program directors, delegates, or agents, including but not limited to hospitals and hospital personnel in their capacity of training emergency service medical personnel for certification or recertification pursuant to this chapter at the request of such directors, for any act or omission committed or omitted in good faith in the performance of (~~his or her~~) their duties.

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 7, 1995.
 Passed the Senate April 6, 1995.
 Approved by the Governor April 19, 1995.
 Filed in Office of Secretary of State April 19, 1995.

CHAPTER 104

[House Bill 1226]

SALMON CHARTER LICENSES—TAKING OF SHELLFISH

AN ACT Relating to salmon charter licenses; and amending RCW 75.28.095.

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

Sec. 1. RCW 75.28.095 and 1993 sp.s. c 17 s 41 are each amended to read as follows:

(1) 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 fees and surcharges are:

License or Permit	Annual Fee (RCW 75.50.100 Surcharge)		Governing Section
	Resident	Nonresident	
(a) Nonsalmon charter	\$225	\$375	
(b) Salmon charter	\$380 (plus \$100)	\$685 (plus \$100)	RCW 75.30.065
(c) Salmon angler	\$ 0	\$ 0	RCW 75.30.070
(d) Salmon roe	\$ 95	\$ 95	RCW 75.28.690

(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 or shellfish 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 that brings food fish or shellfish into state ports or 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 vessel used by 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.

(5) A charter boat licensed in Oregon may fish without a Washington charter 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, 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.

Passed the House March 7, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 105

[Substitute House Bill 1437]

AMATEUR RADIO REPEATER SITES—LEASE RATES

AN ACT Relating to lease rates for amateur radio repeater sites; and amending RCW 79.12.025.

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

Sec. 1. RCW 79.12.025 and 1988 c 209 s 2 are each amended to read as follows:

The department of natural resources shall determine the lease rate for amateur radio electronic repeater sites and units available for public service communication. ~~((For the first repeater unit placed at a department communication site by an amateur radio lessee eligible for a reduced rate under this section, the lessee shall pay fifty percent of the amateur radio rental established by the department. For any subsequent repeater unit placed at the same facility by an eligible amateur radio lessee, the lessee shall pay twenty five percent of the rental established by the department))~~ For the amateur operator to qualify for a rent of one hundred dollars per year per site, the amateur operator shall do one of the following: (1) Register and remain in good standing with the state's radio amateur civil emergency services and amateur radio emergency services organizations, or (2) if an amateur group, sign a statement of public service developed by the department.

The legislature's biennial appropriations shall account for the estimated difference between the one hundred dollar per year, per site, per lessee paid by

the qualified amateur operators and the fair market amateur rent, as established by the department.

The amateur radio regulatory authority approved by the federal communication commission shall assign the radio frequencies used by amateur radio lessees. The department shall develop guidelines to determine which lessees are to receive reduced rental fees as moneys are available by legislative appropriation to pay a portion of the rent for electronic repeaters operated by amateur radio operators.

Passed the House March 9, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 106

[Engrossed Substitute House Bill 1512]

ADOPT-A-HIGHWAY PROGRAM—REVISED PROVISIONS

AN ACT Relating to adopt-a-highway programs; amending RCW 47.40.100; and creating a new section.

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

Sec. 1. RCW 47.40.100 and 1990 c 258 s 5 are each amended to read as follows:

(1) ~~The department of transportation shall establish a state-wide adopt-a-highway ((litter control)) program ((whereby volunteer organizations may contribute to a cleaner environment and a more attractive state by adopting sections of state highway and picking up litter along those sections)).~~ The purpose of the program is to provide volunteers and businesses an opportunity to contribute to a cleaner environment, enhanced roadsides, and protection of wildlife habitats. Participating volunteers and businesses shall adopt department-designated sections of state highways, rest areas, park and ride lots, intermodal facilities, and any other facilities the department deems appropriate, in accordance with rules adopted by the department. The department may elect to coordinate a consortium of participants for adopt-a-highway projects.

The adopt-a-highway program shall include, at a minimum, litter control for the adopted section, and may include additional responsibilities such as planting and maintaining vegetation, controlling weeds, graffiti removal, and any other roadside improvement or clean-up activities the department deems appropriate. The department shall not accept adopt-a-highway proposals that would have the effect of terminating classified employees or classified employee positions.

(2) A volunteer group or business choosing to participate in the adopt-a-highway program must submit a proposal to the department. The department shall review the proposal for consistency with departmental policy and rules. The department may accept, reject, or modify an applicant's proposal.

(3) The department shall seek partnerships with volunteer groups and businesses to facilitate the goals of this section. The department may solicit funding for the adopt-a-highway program that allows private entities to undertake all or a portion of financing for the initiatives. The department shall develop guidelines regarding the cash, labor, and in-kind contributions to be performed by the participants.

(4) An organization whose name: (a) Endorses or opposes a particular candidate for public office, (b) advocates a position on a specific political issue, initiative, referendum, or piece of legislation, or (c) includes a reference to a political party shall not be eligible to participate in the adopt-a-highway program.

~~((2))~~ (5) In administering the adopt-a-highway program, the department shall:

(a) Provide a standardized application form, registration form, and contractual agreement for all ~~((volunteer))~~ participating groups. ~~((Such))~~ The forms shall notify the prospective participants of the risks and responsibilities to be assumed by ~~((either))~~ the department ~~((and/or the volunteer groups))~~ and the participants;

(b) Require all ~~((volunteers))~~ participants to be at least fifteen years of age;

(c) Require parental consent for all minors;

(d) Require at least one ~~((volunteer))~~ adult supervisor for every eight minors;

(e) Require one designated leader for each ~~((volunteer))~~ participating organization, unless the department chooses to coordinate a consortium of participants;

(f) Assign each ~~((volunteer))~~ participating organization a section or sections of state highway, or other state-owned transportation facilities, for a specified period of time;

(g) Recognize the efforts of a participating organization by erecting and maintaining signs with the organization's name on both ends of the organization's section of highway;

(h) Provide appropriate safety equipment ~~((and "Volunteer Litter Crew Ahead" signs))~~. Safety equipment ~~((, other than hardhats,))~~ issued to ~~((volunteer organizations))~~ participating groups must be returned to the department ~~((after each use for reuse by other volunteer groups))~~ upon termination of the applicable adopt-a-highway agreement;

(i) Provide safety training for all ~~((volunteers))~~ participants;

(j) Pay any and all premiums or assessments required under RCW 51.12.035 to secure medical aid benefits under chapter 51.36 RCW for all volunteers participating in the program;

(k) Require participating businesses to pay all employer premiums or assessments required to secure medical aid benefits under chapter 51.36 RCW for all employees or agents participating in the program;

(l) Maintain records of all injuries and accidents that occur;

~~((H))~~ (m) Adopt rules ~~((which))~~ that establish a process to resolve any question of an organization's eligibility to participate in the adopt-a-highway program;

~~((M))~~ (n) Obtain permission from property owners who lease right of way before allowing ~~((a volunteer))~~ an organization to adopt a section of highway on such leased property; and

~~((A))~~ (o) Establish procedures and guidelines for the adopt-a-highway program.

~~((3))~~ (6) Nothing in this section affects the rights or activities of, or agreements with, adjacent landowners, including the use of rights of way and crossings, nor impairs these rights and uses by the placement of signs.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referring to this act by bill number, is not provided for in a transportation appropriations act in 1995 that either becomes law under Article III, section 12 of the state Constitution or is approved by the people of the state, this act is null and void.

Passed the House March 7, 1995.

Passed the Senate April 5, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 107

[House Bill 1525]

BANKS—NUMBER OF ITEMS TO BE MADE AVAILABLE TO CUSTOMER FOR INSPECTION

AN ACT Relating to information provided by banks for customers' examination of negotiable instruments; amending RCW 62A.4-406; providing an effective date; and declaring an emergency. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 62A.4-406 and 1993 c 229 s 111 are each amended to read as follows:

(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))~~ two 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 RCW 30.22.230. 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 proves that the customer failed with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank 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.

(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 (a)) discover and report the customer's unauthorized signature or any alteration on the face or back of the item or does not within 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. 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.

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, 1995.

Passed the House March 1, 1995.

Passed the Senate April 5, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 108

[Substitute House Bill 1549]

SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE—ELIGIBILITY AND PARTICIPATION

AN ACT Relating to treatment-oriented sentences for offenders convicted of manufacture, delivery, or possession with intent to deliver a narcotic from Schedule I or II; amending RCW 9.94A.030 and 9.94A.190; reenacting and amending RCW 9.94A.120; adding a new section to chapter 9.94A RCW; creating a new section; prescribing penalties; and declaring an emergency.

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

Sec. 1. RCW 9.94A.030 and 1994 c 261 s 16 are each 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 or imposed pursuant to RCW 9.94A.120(6) 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 16.52.200(6) or 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 RCW 38.52.430.

(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(9); (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) "Day fine" means a fine imposed by the sentencing judge that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(14) "Day reporting" means a program of enhanced supervision designed to monitor the defendant's daily activities and compliance with sentence conditions and in which the defendant is required to report daily to a specific location designated by the department or the sentencing judge.

(15) "Department" means the department of corrections.

~~((14))~~ (16) "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))~~ (17) "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))~~ (18) "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))~~ (19) "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))~~ (20) "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))~~ (21) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

~~((20))~~ (22)(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))~~, nor the manufacture, delivery, or possession with intent to deliver methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2), nor 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 marijuana, 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))~~ (23) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

- (k) Manslaughter in the first degree;
- (l) Manslaughter in the second degree;
- (m) Promoting prostitution in the first degree;
- (n) Rape in the third degree;
- (o) Robbery in the second degree;
- (p) Sexual exploitation;
- (q) Vehicular assault;
- (r) 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;
- (s) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under this section;
- (t) Any other felony with a deadly weapon verdict under RCW 9.94A.125;
- (u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection.

~~((22))~~ (24) "Nonviolent offense" means an offense which is not a violent offense.

~~((23))~~ (25) "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.

~~((24))~~ (26) "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.

~~((23))~~ (27) "Persistent offender" is an offender who:

(a) Has been convicted in this state of any felony considered a most serious offense; and

(b) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

~~((26))~~ (28) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((27))~~ (29) "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.

~~((28))~~ (30) "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.

~~((29))~~ (31) "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.

~~((30))~~ (32) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((31))~~ (33) "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.

~~((32))~~ (34) "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.

~~((33))~~ (35) "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.

~~((34))~~ (36) "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.

~~((35))~~ (37) "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.

~~((36))~~ (38) "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.

~~((37))~~ (39) "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 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 ~~((34))~~ (33) of this section are not eligible for the work crew program.

~~((38))~~ (40) "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.

~~((39))~~ (41) "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.

~~((40)) (42)~~ "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. 2. A new section is added to chapter 9.94A RCW to read as follows:

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 under RCW 69.50.401(d) or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(1) 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: (a) Successfully completing twenty-one days in a work release program, (b) 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, (c) 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, (d) having no prior charges of escape, and (e) fulfilling the other conditions of the home detention program.

(2) Participation in a home detention program shall be conditioned upon: (a) 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, (b) abiding by the rules of the home detention program, and (c) 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. 3. RCW 9.94A.120 and 1994 c 1 s 2 (Initiative Measure No. 593) and 1993 c 31 s 3 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), (4), (5), (6), and ~~((7))~~ (8) 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) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. 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. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(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)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of 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 a felony that is, under chapter 9A.28

RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes, and the violation does not involve a sentence enhancement under RCW 9.94A.310(3);

(i) The offender has no prior convictions for a felony in this state, another state, or the United States; and

(ii) The offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance.

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections. If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work release status. The court shall also impose one year of concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment alternative to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

(i) Devote time to a specific employment or training;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(iii) Report as directed to a community corrections officer;

(iv) Pay all court-ordered legal financial obligations;

(v) Perform community service work;

(vi) Stay out of areas designated by the sentencing judge.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney, a violation hearing shall be held by the court. If the court finds that conditions have been willfully violated, the court may impose

confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court.

(d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(7) 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))~~ (8)(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))~~ (8) 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))~~ (8) 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.~~

~~(e)) 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 ~~((e)-of)~~ this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection ~~((e))~~ (8)(b) does not apply to any crime committed after July 1, 1990.

~~((d))~~ (c) 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))~~ (9)(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 not sentenced under subsection (6) of this section, 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))~~ (10) 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))~~ (11) 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))~~ (12) 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))~~ (13) 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 July 25, 1993, 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))~~ (14) 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))~~ (15) 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))~~ (16) 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))~~ (17) 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))~~ (18) 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))~~ (19) 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))~~ (20) 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 9.94A.190 and 1991 c 181 s 5 are each amended to read as follows:

(1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided for in subsection (3) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the defendant or a member of the defendant's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided for in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department of corrections for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on

another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.400.

(4) For sentences imposed pursuant to RCW 9.94A.120(6) which have a sentence range of over one year, notwithstanding any other provision of this section all such sentences regardless of length shall be served in a facility or institution operated, or utilized under contract, by the state.

NEW SECTION. Sec. 5. The commission shall evaluate the impact of implementing the drug offender options provided for in RCW 9.94A.120(6). The commission shall submit preliminary findings to the legislature by December 1, 1996, and shall submit the final report to the legislature by December 1, 1997. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates.

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 13, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 109

[Substitute House Bill 1671]

COMMODITY COMMISSIONS—AUTHORITY TO RAISE ASSESSMENT RATES

AN ACT Relating to agricultural commodity commissions; adding a new section to chapter 15.65 RCW; adding a new section to chapter 15.26 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 15.65 RCW to read as follows:

The hop commodity board may raise the rate of annual assessment in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of two dollars and fifty cents per affected unit in effect under chapter 16-532 WAC on the effective date of this act to three dollars per affected unit. For this purpose, the affected unit is two hundred pounds net of hops or the amount of lupulin, extract, or oil produced from two hundred pounds net of hops.

The mint commodity board may raise the rate of annual assessment in excess of the fiscal growth factor under chapter 43.135 RCW from the

assessment of three and one-half cents per affected unit in effect under chapter 16-540 WAC on the effective date of this act to five cents per affected unit. For this purpose, the affected unit is one pound of mint oil as distilled from mint plants grown by an affected producer and as weighed by the first purchaser.

The assessment limits established by this section are set solely to provide prior legislative authority for the purposes of RCW 43.135.055 and may not be construed as providing a limitation on the authority of either commodity board to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under the authority of this section shall be made in compliance with the procedural requirements established by this chapter for altering or amending such assessments.

NEW SECTION. Sec. 2. A new section is added to chapter 15.26 RCW to read as follows:

The Washington tree fruit research commission may raise the assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of two dollars per ton in effect under chapter 16-560 WAC on the effective date of this act to four dollars per ton. The commission may also establish an additional assessment on all tree fruits under RCW 15.26.155 of not more than eight cents per ton.

The assessment limits established by this section are set solely to provide prior legislative authority for the purposes of RCW 43.135.055 and may not be construed as providing a limitation on the authority of the tree fruit research commission to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under the authority of this section shall be made in compliance with the procedural requirements established by this chapter for altering or amending such assessments.

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, 1995.

Passed the House March 15, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 110

[Substitute House Bill 1744]

TELECOMMUNICATIONS—STREAMLINED REGULATION OF SMALL COMPANIES

AN ACT Relating to streamlined regulation of small telecommunications companies; amending RCW 80.36.135; adding a new section to chapter 80.04 RCW; adding a new section to chapter 80.08 RCW; adding a new section to chapter 80.12 RCW; and adding a new section to chapter 80.16 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 80.04 RCW to read as follows:

(1)(a) Except as provided in (b) of this subsection, the following do not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington: RCW 80.04.080, 80.04.300 through 80.04.330, and, except for RCW 80.08.140, chapters 80.08, 80.12, and 80.16 RCW.

(b) Nothing in this subsection (1) shall affect the commission's authority over the rates, service, accounts, valuations, estimates, or determinations of costs, as well as the authority to determine whether any expenditure is fair, reasonable, and commensurate with the service, material, supplies, or equipment received.

(c) For purposes of this subsection, the number of access lines served by a local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.

(2) Any local exchange company for which an exemption is provided under this section shall not be required to file reports or data with the commission, except each such company shall file with the commission an annual report that consists of its annual balance sheet and results of operations, both presented on a Washington state jurisdictional basis. This requirement may be satisfied by the filing of information or reports and underlying studies filed with exchange carrier entities or regulatory agencies if the jurisdictionally separated results of operations for Washington state can be obtained from the information or reports. This subsection shall not be applied to exempt a local exchange company from an obligation to respond to data requests in an adjudicative proceeding in which it is a party.

(3) The commission may, in response to customer complaints or on its own motion and after notice and hearing, establish additional reporting requirements for a specific local exchange company.

NEW SECTION. Sec. 2. A new section is added to chapter 80.08 RCW to read as follows:

Subject to section 1(1) of this act, this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington.

NEW SECTION. Sec. 3. A new section is added to chapter 80.12 RCW to read as follows:

Subject to section 1(1) of this act, this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington.

NEW SECTION. Sec. 4. A new section is added to chapter 80.16 RCW to read as follows:

Subject to section 1(1) of this act, this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington.

Sec. 5. RCW 80.36.135 and 1989 c 101 s 1 are each amended to read as follows:

(1) The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.36.300, this section, and RCW 80.36.145. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

(2) Subject to the conditions set forth in this chapter and RCW 80.04.130, the commission may regulate telecommunications companies subject before July 23, 1989, to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate. In addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

- (a) Reduce regulatory delay and costs;
- (b) Encourage innovation in services;
- (c) Promote efficiency;
- (d) Facilitate the broad dissemination of technological improvements to all classes of ratepayers;
- (e) Enhance the ability of telecommunications companies to respond to competition;
- (f) Ensure that telecommunications companies do not have the opportunity to exercise substantial market power absent effective competition or effective regulatory constraints; and
- (g) Provide fair, just, and reasonable rates for all ratepayers.

The commission shall make written findings of fact as to each of the above-stated policy goals in ruling on any proposed alternative form of regulation.

(3) A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to ~~((regulate the company under))~~ establish an alternative form of regulation. The company or companies shall submit with ~~((its))~~ the petition ~~((its))~~ a plan for an alternative form of regulation. The plan shall contain ~~((the company's))~~ a proposal for transition to the alternative form of regulation. The commission shall review and may modify or reject the ~~((company's))~~ proposed plan. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission may approve the plan or

modified plan and authorize its implementation, if it finds, after notice and hearing, that the plan or modified plan:

- (a) Is in the public interest;
- (b) Is necessary to respond to such changes in technology and the structure of the intrastate telecommunications industry as are in fact occurring;
- (c) Is better suited to achieving the policy goals set forth in RCW 80.36.300 and this section than the traditional rate of return, rate base regulation;
- (d) Ensures that ratepayers will benefit from any efficiency gains and cost savings arising out of the regulatory change and will afford ratepayers the opportunity to benefit from improvements in productivity due to technological change;
- (e) Will not result in a degradation of the quality or availability of efficient telecommunications services;
- (f) Will produce fair, just, and reasonable rates for telecommunications services; and
- (g) Will not unduly or unreasonably prejudice or disadvantage any particular customer class.

(4) Not later than sixty days from the entry of the commission's order, the company or companies affected by the order may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission. If ~~((the))~~ a company elects to appeal to the courts the final order of the commission authorizing an alternative form of regulation, it shall not change its election to proceed or not proceed after the appeal is concluded. The pendency of a petition by ~~((the))~~ a company for judicial review of the final order shall not serve to extend the sixty-day period.

(5) The commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section: PROVIDED, That the commission may not grant the authority to price list services except as provided in RCW 80.36.300 through 80.36.370, the regulatory flexibility act, nor may it waive any statutory requirements or grants of legal rights to any person contained in this chapter and chapter 80.04 RCW as amended, except as otherwise expressly provided. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.

(6) Upon petition by any person, or upon its own motion, the commission may rescind its approval of an alternative form of regulation if, after notice and hearing, it finds that the conditions set forth in subsection (3) of this section can no longer be satisfied. The commission or any person may file a complaint alleging that the rates charged by a telecommunications company under an alternative form of regulation are unfair, unjust, unreasonable, unduly discriminatory, or are otherwise not consistent with the requirements of this act: PROVIDED, That the complainant shall bear the burden of proving the allegations in the complaint.

Passed the House February 22, 1995.
Passed the Senate April 7, 1995.
Approved by the Governor April 19, 1995.
Filed in Office of Secretary of State April 19, 1995.

CHAPTER 111

[Substitute House Bill 1777]

SCHOOL BOND LEVIES—DISCLOSURE OF USE OF PROCEEDS

AN ACT Relating to the disclosure of proceeds from a school bond levy; and amending RCW 28A.535.020.

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

Sec. I. RCW 28A.535.020 and 1990 c 33 s 481 are each amended to read as follows:

Whenever the board of directors of any school district shall deem it advisable to validate and ratify the indebtedness mentioned in RCW 28A.535.010, they shall provide therefor by resolution, which shall be entered on the records of such school district, which resolution shall provide for the holding of an election for the purpose of submitting the question of validating and ratifying the indebtedness so incurred to the voters of such school district for approval or disapproval, and if at such election three-fifths of the voters in such school district voting at such election shall vote in favor of the validation and ratification of such indebtedness, then such indebtedness so validated and ratified and every part thereof existing at the time of the adoption of said resolution shall thereby become and is hereby declared to be validated and ratified and a binding obligation upon such school district. The resolution adopted by the board of directors shall specify the purposes of the debt financing measure, including the specific buildings to be constructed or remodelled and any additional specific purposes as authorized by RCW 28A.530.010. If the debt financing measure anticipates the receipt of state financing assistance under chapter 28A.525 RCW, the board resolution also shall describe the specific anticipated purpose of the state assistance. If the school board subsequently determines that state or local circumstances should cause any alteration to the specific expenditures from the debt financin or of the state assistance the board shall first conduct a public hearing to consider those circumstances and to receive public testimony. If the board then determines that any such alterations are in the best interests of the district, it may adopt a new resolution or amend the original resolution at a public meeting held subsequent to the meeting at which public testimony was received.

Passed the House March 14, 1995.
Passed the Senate April 7, 1995.
Approved by the Governor April 19, 1995.
Filed in Office of Secretary of State April 19, 1995.

CHAPTER 112

[Substitute House Bill 1873]

CONSUMER LEASES OF MOTOR VEHICLES

AN ACT Relating to consumer leases; amending RCW 63.10.020, 63.10.040, and 63.10.050; adding new sections to chapter 63.10 RCW; and providing an effective date.

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

Sec. 1. RCW 63.10.020 and 1992 c 134 s 15 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) The term "adjusted capitalized cost" means the agreed-upon amount that serves as the basis for determining the periodic lease payment, computed by subtracting from the capitalized cost any capitalized cost reduction.

(2) The term "capitalized cost" means the amount ascribed by the lessor to the vehicle including optional equipment, plus taxes, title, license fees, lease acquisition and administrative fees, insurance premiums, warranty charges, and any other product, service, or amount amortized in the lease. However, any definition of capitalized cost adopted by the federal reserve board to be used in the context of mandatory disclosure of the capitalized cost to lessees in consumer motor vehicle lease transactions supersedes the definition of capitalized cost in this subsection.

(3) The term "capitalized cost reduction" means any payment made by cash, check or similar means, an manufacturer rebate and net trade in allowance granted by the lessor at the inception of the lease for the purpose of reducing the capitalized cost but does not include any periodic lease payments due at the inception of the lease or all of the periodic lease payments if they are paid at the inception of the lease.

(4) The term "consumer lease" means a contract of lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding twenty-five thousand dollars, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any lease which meets the definition of a retail installment contract under RCW 63.14.010 or the definition of a lease-purchase agreement under chapter 63.19 RCW. The twenty-five thousand dollar total contractual obligation in this subsection shall not apply to consumer leases of motor vehicles. The inclusion in a lease of a provision whereby the lessee's or lessor's liability, at the end of the lease period or upon an earlier termination, is based on the value of the leased property at that time, shall not be deemed to make the transaction other than a consumer lease. The term "consumer lease" does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

~~((2))~~ (5) The term "lessee" means a natural person who leases or is offered a consumer lease.

~~((3))~~ (6) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

Sec. 2. RCW 63.10.040 and 1983 c 158 s 4 are each amended to read as follows:

(1) In any lease contract subject to this chapter, the following items, as applicable, shall be disclosed:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor.

(b) The total amount of any payment, such as a refundable security deposit paid by cash, check, or similar means, advance payment, capitalized cost reduction, or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease.

(c) The number, amount, and due dates or periods of payments scheduled under the lease and the total amount of the periodic payments.

(d) The total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes.

(e) The total amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments. This total includes the amount of any liabilities the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values required to be disclosed under (m) of this subsection.

(f) A brief identification of insurance in connection with the lease including (i) if provided or paid for by the lessor, the types and amounts of coverages and cost to the lessee, or (ii) if not provided or paid for by the lessor, the types and amounts of coverages required of the lessee.

(g) A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property.

(h) An identification of the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility, and a statement of reasonable standards for wear and use, if the lessor sets such standards.

(i) A description of any security interest, other than a security deposit disclosed under (b) of this subsection, held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates.

(j) The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments.

(k) A statement of whether or not the lessee has the option to purchase the leased property and, if at the end of the lease term, at what price, and, if prior to the end of the lease term, at what time, and the price or method of determining the price.

(l) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(m) A statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if such liability exists.

(n) Where the lessee's liability at early termination or at the end of the lease term is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale of the leased property by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

(o) Where the lessee's liability at the end of the lease term is based upon the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation at the end of the lease term, and the difference between them.

(ii) That there is a rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period, and that the lessor cannot collect the amount of such excess liability unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees, and that this provision regarding the presumption and attorney's fees does not apply to the extent the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use.

(iii) A statement that the requirements of (o)(ii) of this subsection do not preclude the right of a willing lessee to make any mutually agreeable final adjustment regarding such excess liability.

(p) In consumer leases of motor vehicles:

(i) The capitalized cost stated as a total and the identity of the components listed in the definition of capitalized cost and the respective amount of each component;

(ii) Any capitalized cost reduction stated as a total and the identity of the components and the respective amount of each component;

(iii) A statement of adjusted capitalized cost;

(iv) A disclosure, in proximity to the lessee's signature, in not less than ten point bold type to the lessee: "WARNING!: EARLY TERMINATION UNDER THIS LEASE MAY RESULT IN SIGNIFICANT COSTS TO YOU THE CONSUMER. READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ALL PROVISIONS BEFORE SIGNING. GET ALL PROMISES IN WRITING. ORAL PROMISES ARE DIFFICULT TO ENFORCE."; and

(v) If the lessee trades in a motor vehicle, the amount of any sales tax exemption for the agreed value of the traded vehicle and any reduction in the

periodic payments resulting from the application of the sales tax exemption shall be disclosed in the lease contract.

(2) ~~((Any consumer lease which complies with the disclosure requirements of))~~ Where disclosures required under this chapter are the same as those required under Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, as of the date upon which the consumer lease is executed, disclosures complying with the federal consumer leasing act shall be deemed to comply with the disclosure requirements of this chapter.

NEW SECTION. Sec. 3. A new section is added to chapter 63.10 RCW to read as follows:

Each of the following acts or practices are unlawful in the context of offering a consumer lease of a motor vehicle:

(1) Advertising that is false, deceptive, misleading, or in violation of 12 C.F.R. Sec. 213.5 (a) through (d) and 15 U.S.C. 1667, Regulation M;

(2) Misrepresenting any of the following:

(a) The material terms or conditions of a lease agreement;

(b) That the transaction is a purchase agreement as opposed to a lease agreement; or

(c) The amount of any equity or value the leased vehicle will have at the end of the lease; and

(3) Failure to comply with the disclosure requirements of Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, including, but not limited to, failure to disclose all fees that will be due when a consumer exercises the option to purchase.

Sec. 4. RCW 63.10.050 and 1983 c 158 s 5 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 or deceptive act or practice in ~~((the conduct of))~~ trade or commerce and an unfair method of competition for the purpose of ~~((the application of))~~ applying the consumer protection act, chapter 19.86 RCW.

Regarding damages awarded under this section, the court may award damages allowed under chapter 19.86 RCW or 15 U.S.C. Sec. 1667d (a) and 15 U.S.C. Sec. 1640, but not both.

NEW SECTION. Sec. 5. A new section is added to chapter 63.10 RCW to read as follows:

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law or in equity.

NEW SECTION. Sec. 6. 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. 7. This act shall take effect January 1, 1996.

Passed the House March 8, 1995.

Passed the Senate April 6, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 113

[Substitute House Bill 1917]

FOREST FIRE SUPPRESSION EQUIPMENT—CONTRACTING OUT FOR

AN ACT Relating to emergency response services; amending RCW 76.04.145; adding new sections to chapter 76.04 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 it is frequently in the best interest of the state to utilize fire suppression equipment from private vendors whenever possible in responding to incidents involving wildfires on department-protected lands. It is the intent of the legislature to encourage the department of natural resources to utilize kitchen, shower, and other fire suppression equipment from private vendors as allowed in RCW 76.04.015(4)(b), when such utilization will be most effective and efficient.

NEW SECTION. Sec. 2. A new section is added to chapter 76.04 RCW to read as follows:

(1) The department shall, by June 1 of each year, establish a list of fire suppression equipment, such as portable showers, kitchens, water tanks, dozers, and hauling equipment, provided by the department so that the cost by unit or category can be determined and can be compared to the expense of utilizing private vendors.

(2) The department shall establish a roster of quotes by vendors who are able to provide equipment to respond to incidents involving wildfires on department-protected lands. The department shall use these quotes from private vendors to make a comparison with the costs established in subsection (1) of this section. The department shall utilize the most effective and efficient resource available for responding to wildfires.

NEW SECTION. Sec. 3. A new section is added to chapter 76.04 RCW to read as follows:

Before constructing or purchasing any equipment listed in section 2(1) of this act for wildfire suppression, the department shall compare the per use cost of the equipment to be purchased or constructed with the per use cost of utilizing private equipment. If utilizing private equipment is more effective and efficient,

the department may not construct or purchase the equipment but shall utilize the equipment from the lowest responsive bidder.

**Sec. 4. RCW 76.04.145 and 1986 c 100 s 15 are each amended to read as follows:*

(1) There is hereby created a forest fire advisory board, consisting of ((seven)) eight members who shall represent private and public forest landowners, private contractors of fire suppression equipment, supplies, and services, and other interested segments of the public. The members shall be appointed by the commissioner of public lands and shall serve at the commissioner's pleasure, without compensation.

(2) The duties of the forest fire advisory board shall be strictly advisory and shall include, but not necessarily be limited to:

(a) Reviewing forest fire prevention and suppression policies of the department;

(b) Monitoring expenditures from and recoveries for the landowner contingency forest fire suppression account;

(c) Recommending appropriate assessments and allocations for establishment and replenishment of the account based upon the proportionate expenditures necessitated by participating landowner operations in western and eastern Washington;

(d) Recommending to the department appropriate rules or amendments to existing rules and reviewing nonemergency rules affecting the protection of forest lands from fire, including reasonable alternative means or procedures for the abatement, isolation, or reduction of forest fire hazards.

(3) Except where an emergency exists, all rules concerning matters listed in subsection (2)(d) of this section shall be adopted by the department after consultation with the forest fire advisory board.

**Sec. 4 was vetoed. See message at end of chapter.*

Passed the House March 13, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 19, 1995.

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

"I am returning herewith, without my approval as to section 4, Substitute House Bill No. 1917 entitled:

"AN ACT Relating to emergency response services;"

Substitute House Bill No. 1917 requires the Department of Natural Resources to contract privately for the provision of certain fire suppression equipment when such utilization is efficient and effective. This is an appropriate policy direction and, I am advised by the Commissioner of Public Lands, is in keeping with current departmental practice.

Section 4 adds a representative of private contractors of fire suppression equipment, supplies, and service to the Forest Fire Advisory Board. This board has the primary responsibility to review expenditures from, and recommend increases to, the Landowner Contingency Fund. This fund is established through a fee on landowners. Representation

by this interest group is inconsistent with the duties of the Forest Fire Advisory Board and is an inappropriate forum for advice from equipment contractors. Moreover, adding this representative would unnecessarily increase board costs.

For these reasons, I have vetoed section 4 of Substitute House Bill No. 1917.

With the exception of section 4, Substitute House Bill No. 1917 is approved."

CHAPTER 114

[House Bill 2022]

MINING CLAIMS—FEES IN LIEU OF ASSESSMENT WORK AND WAIVERS OF LABOR AND FEE REQUIREMENTS

AN ACT Relating to the fees, fees in lieu of assessment work or labor requirements, affidavits, or oaths that are necessary to secure mining claims; and amending RCW 78.08.060 and 78.08.081.

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

Sec. 1. RCW 78.08.060 and 1965 c 151 s 1 are each amended to read as follows:

(1) Before filing such notice for record, the discoverer shall locate his or her claim by posting at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and marking the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines.

(2) Prior to valid discovery the actual possession and right of possession of one diligently engaged in the search for minerals shall be exclusive as regards prospecting during continuance of such possession and diligent search. As used in this section, "diligently engaged" shall mean performing not less than one hundred dollars worth of annual assessment work on or for the benefit of the claim or paying any fee or fees in lieu of assessment work in such year or years it is required under federal law, or any larger amount that may be designated now or later by the federal government for annual assessment work.

Sec. 2. RCW 78.08.081 and 1979 ex.s. c 30 s 16 are each amended to read as follows:

Within thirty days after the expiration of the period of time fixed for the performance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf such work or improvement was made or some person for him or her knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate either an affidavit or oath of labor performed on such claim, or affidavit or oath of fee or fees paid to the federal government in lieu of the

annual labor requirement. Such affidavit shall state the exact amount (~~and~~) of fee or fees paid, or the kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law made thereon. When both fee and labor requirements have been waived by the federal government, such affidavit will contain a statement to that effect and the state shall not require labor to be performed. Such affidavit shall contain the section, township and range in which such lode is located if the location be in a surveyed area.

Passed the House March 9, 1995.
 Passed the Senate April 7, 1995.
 Approved by the Governor April 19, 1995.
 Filed in Office of Secretary of State April 19, 1995.

CHAPTER 115

[Senate Bill 5075]

CROWN HILL ELEMENTARY SCHOOL—CONSTRUCTION APPROPRIATION

AN ACT Relating to emergency school construction; making an appropriation; and declaring an emergency.

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

NEW SECTION. Sec. 1. The sum of five million five hundred twenty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1995, from the general fund—state to the department of community, trade, and economic development solely for the purpose of funding emergency school construction of Crown Hill elementary school in the Bremerton school district. Upon approval by the state board of education for release of funds to the Bremerton school district at any time after the effective date of this section, five million five hundred twenty thousand dollars of those funds shall be deposited into the general fund—state for repayment of this appropriation.

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 February 15, 1995.
 Passed the House April 10, 1995.
 Approved by the Governor April 20, 1995.
 Filed in Office of Secretary of State April 20, 1995.

CHAPTER 116

[Engrossed Substitute Senate Bill 5101]
GAME FISH CATCH RECORD CARDS

AN ACT Relating to game fish catch record cards; and amending RCW 77.32.050, 77.32.060, 77.32.070, 77.32.090, 77.32.250, 77.32.256, and 77.32.360.

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

Sec. 1. RCW 77.32.050 and 1987 c 506 s 77 are each amended to read as follows:

Licenses, permits, tags, and stamps(~~(, and punchcards)~~) required by this chapter shall be issued under the authority of the commission. The director may authorize department personnel, county auditors, or other reputable citizens to issue licenses, permits, tags, and stamps(~~(, and punchcards)~~) and collect the appropriate fees. The authorized persons shall pay on demand or before the tenth day of the following month the fees collected and shall make reports as required by the director. The director may adopt rules for issuing licenses, permits, tags, and stamps, (~~and punchcards,~~) collecting and paying fees, and making reports.

Sec. 2. RCW 77.32.060 and 1987 c 506 s 78 are each amended to read as follows:

The director may adopt rules establishing the amount a license dealer may charge and keep for each license, tag, permit, or stamp(~~(, or punchcard)~~) issued. The director shall establish the amount to be retained by dealers to be at least fifty cents for each license issued, and twenty-five cents for each tag, permit, or stamp(~~(, or punchcard)~~) issued. The director shall report to the next regular session of the legislature explaining any increase in the amount retained by license dealers. Fees retained by dealers shall be uniform throughout the state.

Sec. 3. RCW 77.32.070 and 1987 c 506 s 79 are each amended to read as follows:

Applicants for a license, permit, tag, or stamp(~~(, or punchcard)~~) shall furnish the information required by the director. The director may adopt rules requiring licensees or permittees to keep records and make reports concerning the taking of wildlife.

Sec. 4. RCW 77.32.090 and 1987 c 506 s 80 are each amended to read as follows:

The director may adopt rules pertaining to the form, period of validity, use, possession, and display of licenses, permits, tags, and stamps(~~(, and punchcards)~~) required by this chapter.

Sec. 5. RCW 77.32.250 and 1981 c 310 s 29 are each amended to read as follows:

Licenses, permits, tags, and stamps(~~(, and punchcards)~~) required by this chapter shall not be transferred and, unless otherwise provided in this chapter,

are void on January 1st following the year ~~((in))~~ for which the license, permit, tag, or stamp ~~((or punchcard))~~ was issued.

Upon request of a wildlife agent or ex officio wildlife agent, persons licensed, operating under a permit, or possessing wildlife under the authority of this chapter shall produce required licenses, permits, tags, or stamps ~~((or punchcards))~~ for inspection and write their signatures for comparison and in addition display their wildlife. Failure to comply with the request is prima facie evidence that the person has no license or is not the person named.

Sec. 6. RCW 77.32.256 and 1994 c 255 s 13 are each amended to read as follows:

The director shall by rule establish the conditions for issuance of duplicate licenses, rebates, permits, tags, and stamps ~~((and catch record cards))~~ required by this chapter. The fee for a duplicate provided under this section is ten dollars for those licenses that are ten dollars and over, and for those licenses under ten dollars the duplicate fee is the value of the license.

Sec. 7. RCW 77.32.360 and 1991 sp.s. c 7 s 10 are each amended to read as follows:

~~(1) ((A steelhead catch record card is required to fish for steelhead trout. The fee for this catch record card is eighteen dollars.~~

~~(2) Persons possessing steelhead trout shall immediately validate their catch record card as provided by rule.~~

~~(3) The steelhead catch record card required under this section expires April 30th following the date of issuance.~~

~~(4))~~ Each person who returns a steelhead catch record card to an authorized license dealer ~~((by June 1))~~ within thirty days following the period for which it was issued shall be given a credit equal to five dollars towards that day's purchase of any license, permit, transport tag, ~~((catch record card;))~~ or stamp required by this chapter. This subsection does not apply to annual steelhead catch record cards for persons under the age of fifteen.

~~((5) Persons under the age of fifteen may purchase an annual steelhead catch record card for six dollars. The six dollar catch record card entitles the holder to retain no more than five steelhead. After retaining five steelhead, a new catch record card may be purchased.))~~

(2) Catch record cards necessary for proper management of the state's game fish resources shall be administered under rules adopted by the director and issued at no charge.

Passed the Senate February 22, 1995.

Passed the House April 11, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 117

[Second Substitute Senate Bill 5235]

ADDITIONAL SUPERIOR COURT JUDGE—CLARK COUNTY

AN ACT Relating to superior court judges; amending RCW 2.08.062; and creating a new section.

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

Sec. 1. RCW 2.08.062 and 1992 c 189 s 2 are each amended to read as follows:

There shall be in the counties of Chelan and Douglas jointly, three judges of the superior court; in the county of Clark ((six*)) seven judges of the superior court; in the county of Grays Harbor three judges of the superior court; in the county of Kitsap seven judges of the superior court; in the county of Kittitas one judge of the superior court; in the county of Lewis two judges of the superior court.

NEW SECTION. Sec. 2. The additional judicial position created by section 1 of this act is effective only if Clark county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by state law or the state Constitution.

Passed the Senate March 7, 1995.
Passed the House April 11, 1995.
Approved by the Governor April 20, 1995.
Filed in Office of Secretary of State April 20, 1995.

CHAPTER 118

[Senate Bill 5372]

PROJECTS RECOMMENDED BY THE PUBLIC WORKS BOARD—APPROPRIATIONS

AN ACT Relating to appropriations for projects recommended by the public works board; creating new sections; making an appropriation; 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) Admiral's Cove Water District—domestic water project—installation of meters, removal of a condemned steel storage tank, and replacement of failing pumping and distribution facilities to avoid a reinstatement of a DOH moratorium \$252,800
- (2) City of Bainbridge Island—road project—street reconstruction, sidewalk improvements, bike lanes and necessary utilities along Madison Avenue, Brien/Bjune and Shannon Drives \$594,000

- (3) City of Centralia—sanitary sewer project—replacement of sanitary sewer system components and reduction of crossings of China Creek from six to three to meet DOE consent decree \$753,912
- (4) City of Duvall—domestic water project—installation of a 2.2 million gallon storage reservoir, booster pump station, and 2,900 linear feet of 12-inch transmission main \$938,604
- (5) City of Eatonville—domestic water project—construction of a pond to provide cleaner water to the filtration system and storage capacity, and necessary improvements to the chlorine system to meet safety requirements . \$164,000
- (6) City of Everett—storm sewer project—bore and jack a 260 foot long 36-inch culvert, slip line an existing culvert, construction of an upstream weir, a downstream fish ladder, and a viewing platform with interpretive sign near Pigeon Creek \$532,000
- (7) Hangman Hills Water District No. 15—domestic water project—drill a new well, install transmission mains, and construct a pump house . \$123,550
- (8) Hazel Dell Sewer District—sanitary sewer project—replace three existing pump stations with one new pump and force main \$2,186,520
- (9) Highline Water District—domestic water project—rehabilitation of five aging pumping stations and installation of telemetry equipment . . \$2,016,000
- (10) Town of Kalama—domestic water project—replacement of water lines, a 100,000 gallon reservoir, and addition of air release valves where needed in system \$284,600
- (11) King County Water District No. 90—domestic water project—replacement of 146,000 feet of water mains, installation of a telemetry system and generators, and add hydrants \$1,715,000
- (12) King County Water District No. 107—domestic water project—rehabilitation of three supply metering points from the regional water system, upgrade of five pressure reducing stations, and replacement of the Coal Creek water transmission main \$577,500
- (13) King County Water District No. 111—domestic water project—implementation of filtration treatment for sole source production wells to meet DOH maximum contaminant level standards \$1,290,800
- (14) City of Kirkland—sanitary sewer project—construction of a new wet well for emergency storage, two dry wells for mechanical equipment and emergency power, and installation of a new force main, sewer lines, and odor control equipment \$794,850
- (15) Kitsap County PUD No. 1—domestic water project—provide a regional intertie and reserve capacity \$1,947,190
- (16) Klickitat County—bridge project—replacement of four steel truss bridges with concrete slab bridges, including installation of approach rail \$268,800
- (17) Manchester Water District—domestic water project—construction of a 1.5 million gallon standpipe, install approximately 1,175 linear feet of 8 and 10-

- inch water line, reconstruct approximately 1,100 linear feet of roadway, and shoulder reconstruction \$757,845
- (18) Northeast Sammamish Sewer and Water District—domestic water project—replacement of 3,000 linear feet of 8-inch steel transmission main with 12-inch ductile iron pipe \$325,500
- (19) Northeast Sammamish Sewer and Water District—sanitary sewer project—relocate Lift Station No. 3, install a new wet well with adequate storage, and construct a dry well for equipment. \$784,000
- (20) Northshore Utility District—sanitary sewer project—relocate a 15-inch sewer trunk line away from a wetland area near a creek and Lake Washington \$661,138
- (21) Pasco—domestic water project—replace water mains, construct a standpipe for storage, and install the necessary water level and computer controls \$2,687,300
- (22) Pasco—sanitary sewer project—upgrade the city's wastewater treatment plant \$812,700
- (23) Penn Cove Park Water District—domestic water project—replace the water treatment and chlorination systems, seal and line the reservoir, construct a constant pressure pumping station, and replace approximately 5,600 linear feet of water mains \$543,600
- (24) City of Port Angeles—road project—replace approximately 1,800 linear feet of sidewalk and failing water main \$240,000
- (25) City of Poulsbo—sanitary sewer project—replace 21,000 linear feet of 8 and 12-inch sewer, water, and storm sewer line including associated manholes, valves, and catch basins, and repair of all roadway and sidewalks damaged during construction \$953,247
- (26) Rainier Vista Sewer District—sanitary sewer project—remove and replace the sewer main, manholes, rehabilitate the pump station, and repair an adjacent road as needed \$771,470
- (27) City of Redmond—road project—construct and install 4,300 linear feet of 12 foot two-way left turn lane, five bus pullouts, and five walkways from bus stops to business driveways on Willows Road \$1,170,000
- (28) City of Renton—sanitary sewer project—replace sewer lines, install manholes, slipline a portion of line, and repair impacted alleys . . \$1,231,485
- (29) City of Renton—storm sewer project—design and construct approximately 2,800 feet of 18 or 24-inch stormwater pipe. Include manholes, catch basins, control structures, relocation of conflicting utilities, pavement patching and overlay, and restoration of areas disturbed by construction . . . \$731,000
- (30) City of Seattle—bridge project—renovate six significant bridges as part of a seismic retrofit program \$3,500,000
- (31) Shoreline Wastewater Management District—sanitary sewer project—upgrade Lift Station No. 13 by replacing pumps, replacing a 4-inch force main with a 6-inch line, improving the existing wet well, adding a dry well, and replacing electrical and mechanical equipment \$414,000

- (32) Silverdale Water District No. 16—domestic water project—install mains, hydrants, and service connections and restore streets where construction occurs \$1,002,870
- (33) Snohomish County—bridge project—replace five 40 to 60-year old bridges with wider bridges to meet current safety and construction standards and current traffic loads \$1,000,000
- (34) Snohomish County—storm sewer project—install 2,800 linear feet of concrete pipe to divert peak flows during flooding events in Dry Creek neighborhood \$464,450
- (35) Soos Creek Water and Sewer District—sanitary sewer project—repair and improve six lift stations, construct new relief sewers and interceptors, and replace or repair lift stations and force mains \$3,500,000
- (36) City of Spokane—domestic water project—replace approximately 4,000 linear feet of parallel riveted steel water transmission mains with one 36-inch ductile iron pipe along Division Street from Spokane Falls Boulevard to 8th Avenue \$1,140,000
- (37) City of Spokane—sanitary sewer project—remove lead-based paint and repaint two wastewater treatment plant clarifiers to reduce water quality problems \$298,080
- (38) Spokane County—sanitary sewer project—provide interceptor capacity for 6,360 parcels having on-site septic systems or plat approval for on-site disposal; will remove septic systems and protect the North Spokane aquifer and the Little Spokane River. \$2,500,000
- (39) City of Stanwood—domestic water project—construct a one million gallon reservoir and pressure reducing valve station and replace approximately 4,350 linear feet of transmission and distribution lines \$736,200
- (40) Town of Steilacoom—storm sewer project—replace existing storm drain with 18-inch pipe, widen and regrade 950 linear feet of ditch on Union Avenue and Gove Street \$294,350
- (41) Val Vue Sewer District—sanitary sewer project—rehabilitate approximately 4,900 linear feet of gravity sewer lines and 6,500 linear feet of side sewers by relining pipelines using trenchless technology \$584,584
- (42) Whatcom County Water District No. 12—domestic water project—install new water system including ground water wells with disinfection systems, approximately 75,800 linear feet of water main, fire hydrants, household service connections, and construct an 800,000 gallon steel reservoir and a flow meter station for existing population around Lake Samish \$3,500,000
- (43) Woodinville Water District—domestic water project—construct a 1.1 million gallon steel standpipe \$753,000
- (44) Woodinville Water District—sanitary sewer project—replace approximately 3,300 feet of substandard sewer line on N.E. 175th Street . . \$634,000
- (45) City of Yakima—neighborhood reinvestment demonstration project—reconstruction of 1,900 linear feet of three-lane paved street, including sidewalk

along one side and curbs along both sides, striping, illumination, and necessary traffic control \$1,000,000

(46) City of Yakima—sanitary sewer project—install headworks barscreens, biosolids shredders, and variable frequency drives, rehabilitate the digesters, and make other improvements to existing wastewater treatment facility components \$3,030,558

(47) City of Yakima—sanitary sewer project—install about 4,100 linear feet of collectors, 25 manholes, and stubs to approximately 120 existing parcels \$209,367

(48) Yakima County—domestic water project—integrate and intertie two recently acquired water systems, improve two wells, reconstruct and rehabilitate four existing well houses and treatment facilities, install 2,500 linear feet of 8-inch pipe and 1,350 linear feet of 16-inch pipe, install telemetry, and add meters where needed \$728,000

(49) Emergency Public Works Loans—as authorized by RCW 43.155.065 \$494,266

Subtotal section 1 \$51,893,136

NEW SECTION. Sec. 2. The sum of \$7,680,700, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1995, from the public works assistance account to the department of community, trade, and economic development for the following project loans recommended for financing by the public works board.

(1) City of Bremerton—sanitary sewer project—improvements at the wastewater treatment plant for odor control and reduction of chlorine in plant effluent discharged into Puget Sound to bring plant into compliance with a settlement agreement and its national pollution discharge effluent system permit \$3,500,000

(2) Cross Valley Water District—domestic water project—water main relocation and replacement to increase fireflow to an industrial area and branch campus of the University of Washington \$249,200

(3) Lake Stevens Sewer District—sanitary sewer project—construction of a new lift station, and replace two other stations \$1,080,000

(4) City of Moses Lake—domestic water project—build a 2.5 million gallon steel reservoir, replace approximately 3,000 linear feet of pipe, and install telemetry \$1,500,000

(5) City of Spokane—domestic water project—installation of 4,300 linear feet of 30-inch ductile iron water transmission main along Fifth Avenue \$661,920

(6) City of Spokane—sanitary sewer project—replace the current three-pump lift station with a new five-pump lift station, install an emergency generator, and replace a force main \$1,040,000

(7) City of Spokane—storm sewer project—replace undersized pipe, modify inlets and construct a spillway at the intersection of Oak and Riverside Streets \$360,000

Subtotal section 2	\$8,391,120
Total approved list	\$60,284,256

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 14, 1995.
Passed the House April 11, 1995.
Approved by the Governor April 20, 1995.
Filed in Office of Secretary of State April 20, 1995.

CHAPTER 119

[Substitute Senate Bill 5647]

**TRANSFERRED COMMUNITY AND TECHNICAL COLLEGE
EMPLOYEES—RETENTION OF SICK LEAVE**

AN ACT Relating to retention of sick leave by transferred employees of community and technical colleges; and amending RCW 28B.50.551.

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

Sec. 1. RCW 28B.50.551 and 1991 c 238 s 59 are each amended to read as follows:

The board of trustees of each college district shall adopt for each community and technical college under its jurisdiction written policies on granting leaves to employees of the district and those colleges, including but not limited to leaves for attendance at official or private institutions and conferences; professional leaves for personnel consistent with the provisions of RCW 28B.10.650; leaves for illness, injury, bereavement and emergencies, and except as otherwise in this section provided, all with such compensation as the board of trustees may prescribe, except that the board shall grant to all such persons leave with full compensation for illness, injury, bereavement and emergencies as follows:

(1) For persons under contract to be employed, or otherwise employed, for at least three quarters, not more than twelve days per year, commencing with the first day on which work is to be performed; provisions of any contract in force on June 12, 1980, which conflict with requirements of this subsection shall continue in effect until contract expiration; after expiration, any new contract executed between the parties shall be consistent with this subsection;

(2) Such leave entitlement may be accumulated after the first three-quarter period of employment for full time employees, and may be taken at any time;

(3) Leave for illness, injury, bereavement and emergencies heretofore accumulated pursuant to law, rule, regulation or policy by persons presently employed by college districts and community and technical colleges shall be added to such leave accumulated under this section;

(4) Except as otherwise provided in this section or other law, accumulated leave under this section not taken at the time such person retires or ceases to be

employed by college districts or community and technical colleges shall not be compensable;

(5) Accumulated leave for illness, injury, bereavement and emergencies ~~((under this section))~~ shall be transferred from one college district ~~((or community and technical college))~~ to another ~~((, to the college board, to the state superintendent of public instruction, to))~~ or between a college district and the following: Any state agency, any educational service district, any school district, or any other institution of higher learning of the state of higher education as defined in RCW 28B.10.016;

(6) Leave accumulated by a person in a college district or community and technical college prior to leaving that district or college may, under the policy of the board of trustees, be granted to such person when he or she returns to the employment of that district or college; and

(7) Employees of the Seattle Vocational Institute are exempt from this section until July 1, 1993.

Passed the Senate March 9, 1995.

Passed the House April 10, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 120

[Senate Bill 5771]

UNEMPLOYMENT COMPENSATION—THIRD PARTY EMPLOYERS

AN ACT Relating to third party employers; adding a new section to chapter 50.04 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 50.04 RCW to read as follows:

(1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, a third party pursuant to a contract with a temporary services agency, employee leasing agency, services referral agency, or other entity shall be deemed to be employment for the temporary services agency, employee leasing agency, services referral agency, or other entity when the agency is responsible, under contract or in fact, for the payment of wages in remuneration for the services performed.

(2) For the purposes of this section:

(a) "Temporary services agency" means an individual or entity that is engaged in the business of furnishing individuals to perform services on a part-time or temporary basis for a third party.

(b) "Employee leasing agency" means an individual or entity that for a fee places the employees of a client onto its payroll and leases such employees back to the client.

(c) "Services referral agency" means an individual or entity that is engaged in the business of offering the services of an individual to perform specific tasks for a third party.

NEW SECTION. Sec. 2. 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.

Passed the Senate March 10, 1995.

Passed the House April 10, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 121

[Senate Bill 5806]

SCHOOL DISTRICT BUDGET DEVELOPMENT DATES

AN ACT Relating to school district budget development dates; amending RCW 28A.505.040 and 28A.505.050; and declaring an emergency.

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

Sec. 1. RCW 28A.505.040 and 1975-'76 2nd ex.s. c 118 s 4 are each amended to read as follows:

On or before the tenth day of July in each year, all school districts shall prepare their budget for the ensuing fiscal year. The budget shall set forth the complete financial plan of the district for the ensuing fiscal year.

Upon completion of their budgets, every school district shall publish a notice stating that the district has completed the budget, placed it on file in the school district administration office, and that a copy thereof will be furnished to any person who calls upon the district for it. The district shall provide a sufficient number of copies of the budget to meet the reasonable demands of the public. School districts shall submit one copy of their budget to their educational service districts for review and comment by July 10th. The superintendent of public instruction may delay the date in this section if the state's operating budget is not finally approved by the legislature until after June 1st.

Sec. 2. RCW 28A.505.050 and 1990 c 33 s 417 are each amended to read as follows:

Upon completion of their budgets as provided in RCW 28A.505.040, every school district shall publish a notice stating that the ~~((district has completed the budget and placed the same on file in the school district administration office;~~

that a copy thereof will be furnished any person who will call upon the district for it, and that the) board of directors will meet for the purpose of fixing and adopting the budget of the district for the ensuing fiscal year. Such notice shall designate the date, time, and place of said meeting which shall occur no later than the thirty-first day of August for first class school districts, and the first day of August for second class school districts. The notice shall also state that any person may appear thereat and be heard for or against any part of such budget. Said notice shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the district, or, if there be none, in a newspaper of general circulation in the county or counties in which such district is a part. The last notice shall be published no later than seven days immediately prior to the hearing.

~~((The district shall provide a sufficient number of copies of the budget to meet the reasonable demands of the public not later than July 20th in the first class school districts, and not later than July 15th in second class school districts. School districts shall submit one copy of their budget to their educational service districts for review and comment by these dates.))~~

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, 1995.

Passed the House April 10, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 122

[Engrossed Substitute Senate Bill 5868]

MOBILE HOME RELOCATION ASSISTANCE

AN ACT Relating to mobile home relocation assistance; amending RCW 59.21.010, 59.21.030, 59.21.040, 59.21.050, and 59.21.070; reenacting and amending RCW 59.21.105 and 43.84.092; reenacting RCW 59.21.005; adding new sections to chapter 59.21 RCW; creating a new section; repealing RCW 59.21.020, 59.21.035, 59.21.080, 59.21.085, 59.21.095, 59.21.900, 59.21.901, 59.21.902, and 59.21.903; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature recognizes that, in the decision of *Guimont et al. v. Clarke*, 121 Wn.2d (1993), the Washington supreme court held the mobile home relocation assistance program of chapter 59.21 RCW invalid for its monetary burden on mobile home park-owners. However, during the program's operation, substantial funds were validly collected from mobile home owners and accumulated in the mobile home park relocation fund, created under the program. The legislature intends to utilize those funds for the purposes for which they were collected. The legislature also recognizes that, for a period of almost three years since this state's courts invalidated the program, no such

assistance was available. The most needy tenants may have been forced to sell or abandon rather than relocate their homes in the face of park closures. Because the purpose of the program was to assist relocation, those persons should be compensated in a like manner to those who could afford to pay for relocation without assistance. To that end, the legislature has: (1) Repealed RCW 59.21.020, 59.21.035, 59.21.080, 59.21.085, 59.21.095, 59.21.900, 59.21.901, 59.21.902, and 59.21.903; (2) amended RCW 59.21.010, 59.21.030, 59.21.040, 59.21.050, 59.21.070, 59.21.100, 59.21.110, and 43.84.092; (3) reenacted without amendment RCW 59.21.005 and 59.21.105; and (4) added new sections to chapter 59.21 RCW.

Sec. 2. RCW 59.21.005 and 1991 c 327 s 8 are each reenacted to read as follows:

The legislature recognizes that it is quite costly to move a mobile home. Many mobile home tenants need financial assistance in order to move their mobile homes from a mobile home park. The purpose of this chapter is to provide a mechanism for assisting mobile home tenants to relocate to suitable alternative sites when the mobile home park in which they reside is closed or converted to another use.

Sec. 3. RCW 59.21.010 and 1991 c 327 s 10 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Director" means the director of the department of community, trade, and economic development.

(2) "Department" means the department of community, trade, and economic development.

(3) "Fund" means the mobile home park relocation fund established under RCW 59.21.050 (~~consisting of park owner fee payments under RCW 59.21.095 as well as park owner payments when there are insufficient moneys in its fund~~).

(4) (~~"Low income" means at or below eighty percent of median household income as defined by the United States department of housing and urban development, for the county or standard metropolitan statistical area where the park is located.~~

~~(5))~~ "Mobile home park" or "park" means real property that 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 the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

~~((6))~~ (5) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

~~((7))~~ (6) "Relocate" means to remove the mobile home from the mobile home park being closed.

~~((8))~~ (7) "Relocation assistance" means the monetary assistance provided under RCW 59.21.020.

NEW SECTION. Sec. 4. A new section is added to chapter 59.21 RCW to read as follows:

(1) If a mobile home park is closed or converted to another use after June 30, 1991, and before January 1, 1996, each tenant therein owning their mobile home at the time of closure or conversion is entitled to relocation assistance from the fund as follows, upon sufficient proof of eligibility.

(2) Persons who maintained ownership of and relocated their mobile homes are entitled to their actual costs of relocation, up to a maximum of six thousand five hundred dollars for a double-wide mobile home and three thousand five hundred dollars for a single-wide mobile home.

(3) Persons who sold or abandoned their mobile homes without incurring relocation expenses are entitled to a flat reimbursement of three thousand five hundred dollars for a double-wide mobile home and one thousand five hundred dollars for a single-wide mobile home.

(4) The department will accept applications for this assistance from the effective date of this act until December 31, 1995. At the end of that period, the department shall determine the validity of all claims.

(5) Upon determination of the number and amount of valid claims, the department shall disburse the funds in the mobile home park relocation fund as follows: (a) If sufficient funds exist to pay all the claims, the department shall pay each claim fully; and (b) if sufficient funds do not exist, the department shall pay each claim on a pro rata basis.

NEW SECTION. Sec. 5. A new section is added to chapter 59.21 RCW to read as follows:

(1) If a mobile home park is closed or converted to another use after December 31, 1995, eligible tenants shall be entitled to assistance on a first-come, first-serve basis. Payments shall be made upon the department's verification of eligibility, subject to the availability of funds remaining after the distribution under section 4 of this act.

(2) Assistance for closures occurring after December 31, 1995, is limited to persons who maintain ownership of and relocate their mobile home.

(3) Except under subsection (4) of this section, assistance shall be subject to the levels set forth in section 4(2) of this act.

(4) Any organization may apply to receive funds from the mobile home park relocation fund, for use in combination with funds from public or private sources, toward relocation of tenants eligible under this section. Funds received from the mobile home park relocation fund shall only be used for relocation assistance.

NEW SECTION. Sec. 6. A new section is added to chapter 59.21 RCW to read as follows:

If financial assistance for relocation is obtained from sources other than the mobile home park relocation fund established under this chapter, then the

relocation assistance provided to any person under this chapter shall be reduced as necessary to ensure that no person receives more than: (1) That person's actual cost of relocation; or (2) the amounts provided under section 4(3) of this act, whichever applies.

Sec. 7. RCW 59.21.030 and 1990 c 171 s 3 are each amended to read as follows:

Notice required by RCW 59.20.080 before park closure or conversion of the park, whether twelve months or longer, shall be given to the director and all tenants in writing, and posted at all park entrances. ~~((Notice must also include the tenant's right to relocation assistance, if applicable.))~~ A copy of the closure notice must be provided with all month-to-month rental agreements signed after the original closure notice date. Notice to the director must include a good faith estimate of the timetable for removal of the mobile homes and the reason for closure. Notice must also be recorded in the office of the county auditor for the county where the mobile home park is located. ~~((This section shall apply to all park closures even though notice may have been given prior to April 28, 1989.))~~

Sec. 8. RCW 59.21.040 and 1989 c 201 s 4 are each amended to read as follows:

A tenant is not entitled to relocation assistance under ~~((RCW 59.21.020))~~ this chapter if: (1) The tenant has given notice to the landlord of his or her intent to vacate the park and terminate the tenancy before any written notice of ~~((termination required by the landlord under this chapter))~~ closure pursuant to RCW 59.20.080(1)(e) has been given, or (2) ~~((a person purchases))~~ the tenant purchased a mobile home already situated in the park or ~~((moves))~~ moved a mobile home into the park after a written notice of closure ~~((or change of use notice))~~ pursuant to RCW 59.20.090 has been given and the person ~~((has))~~ received actual prior notice of the change or closure. However, no tenant may be denied relocation assistance under subsection (1) of this section if the tenant has remained on the premises and continued paying rent for a period of as least six months after giving notice of intent to vacate and before receiving formal notice of a closure or change of use.

Sec. 9. RCW 59.21.050 and 1991 sp.s. c 13 s 74 are each amended to read as follows:

(1) ~~((The mobile home park relocation fund is created in the custody of the state treasurer. All legislative appropriations for mobile home relocation assistance, receipts from fees collected under this chapter, and amounts required to be paid by park owners to low-income park tenants when there are insufficient moneys in the fund shall be deposited into the fund. Expenditures from the fund may be used only for relocation assistance under RCW 59.21.020, or transfer to the mobile home park purchase fund under subsection (2) of this section. Only the director of community development or the director's designee may authorize expenditures from the fund. All relocation payments to low-income park tenants, including those due from the park owner shall be made from the fund. The fund~~

is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

~~(2) Unexpended and unencumbered moneys that remain in the fund at the end of the fiscal year do not revert to the state general fund but remain in the fund, separately accounted for, as a contingency reserve, or if the director determines at the end of any fiscal year beginning after December 31, 1991, that the fund contains a surplus over the projected amount needed for relocation during the upcoming year(s), any surplus may be transferred to the mobile home park purchase fund created by chapter 59.22 RCW. However, the director may cause any uncommitted funds in the mobile home park purchase fund which were transferred from the mobile home park relocation fund to be transferred back to the mobile home park relocation fund if that fund cannot otherwise meet its current obligations.~~

~~(3) A low-income park tenant who is entitled to relocation assistance under this chapter is entitled to payment only after submitting an application which includes: (a) A copy of the notice from the park owner that the tenancy is terminated due to closure of the park; (b) a copy of the rental agreement currently in force; and (c) a copy of the contract entered into for the purpose of relocating the mobile home, which includes the date of relocation.~~

~~(4) The director may adopt rules for the administration of the fund)) The existence of the mobile home park relocation fund in the custody of the state treasurer is affirmed. Expenditures from the fund may be used only for relocation assistance under sections 4 through 6 of this act. Only the director or the director's designee may authorize expenditures from the fund. All relocation payments to tenants shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.~~

(2) A park tenant is eligible for assistance under section 4 of this act only after an application is submitted by that tenant or an organization acting on the tenant's account under section 5(4) of this act on a form approved by the director which shall include:

(a) For those persons who maintained ownership of and relocated their homes: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; (iii) a copy of the contract for relocating the home which includes the date of relocation, or other proof of actual relocation expenses incurred on a date certain; and (iv) a statement of any other available assistance;

(b) For those persons who sold their homes and incurred no relocation expenses: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; and (iii) a copy of the

record of title transfer issued by the department of licensing when the tenant sold the home rather than relocate it due to park closure or conversion.

Sec. 10. RCW 59.21.070 and 1989 c 201 s 10 are each amended to read as follows:

If the rental agreement includes a covenant by the landlord as described in RCW 59.20.060(1)((e))(g)(i), the covenant runs with the land and is binding upon the purchasers, successors, and assigns of the landlord.

Sec. 11. RCW 59.21.105 and 1991 c 327 s 16 are each reenacted and amended to read as follows:

(1) The legislature finds that existing older mobile homes provide affordable housing to many persons (~~of low income~~), and that requiring these homes that are legally located in mobile home parks to meet new fire, safety, and construction codes because they are relocating due to the closure or conversion of the mobile home park, compounds the economic burden facing these tenants.

(2) Mobile homes that are relocated due to either the closure or conversion of a mobile home park, may not be required by any city or county to comply with the requirements of any applicable fire, safety, or construction code for the sole reason of its relocation. This section shall only apply if the original occupancy classification of the building is not changed as a result of the move.

(3) This section shall not apply to mobile homes that are substantially remodeled or rehabilitated, nor to any work performed in compliance with installation requirements. For the purpose of determining whether a moved mobile home has been substantially remodeled or rebuilt, any cost relating to preparation for relocation or installation shall not be considered.

Sec. 12. RCW 43.84.092 and 1994 c 2 s 6 (Initiative Measure No. 601), 1993 sp.s. c 25 s 511, 1993 sp.s. c 8 s 1, 1993 c 500 s 6, 1993 c 492 s 473, 1993 c 445 s 4, 1993 c 329 s 2, and 1993 c 4 s 9 are each reenacted and 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) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management

improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) 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 education construction fund, the emergency reserve fund, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services 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 real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, 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 state 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, 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 (4)(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 marine operating fund, the motor vehicle fund, and the transportation fund.

(5) 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. 13. The following acts or parts of acts are each repealed:

- (1) RCW 59.21.020 and 1991 c 327 s 11, 1990 c 171 s 2, & 1989 c 201 s 2;
- (2) RCW 59.21.035 and 1990 c 171 s 4;
- (3) RCW 59.21.080 and 1990 c 171 s 9 & 1989 c 201 s 11;
- (4) RCW 59.21.085 and 1991 c 327 s 15;
- (5) RCW 59.21.095 and 1991 c 327 s 9;
- (6) RCW 59.21.900 and 1989 c 201 s 17;
- (7) RCW 59.21.901 and 1991 c 327 s 17;
- (8) RCW 59.21.902 and 1991 c 327 s 19; and
- (9) RCW 59.21.903 and 1991 c 327 s 20.

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. 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, 1995.

Passed the House April 10, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 123

[Senate Bill 5882]

SURPLUS PROPERTY—AUTHORITY OF STATE OR POLITICAL
SUBDIVISION TO DISPOSE OF

AN ACT Relating to the authority of the state or a political subdivision to dispose of surplus property; and amending RCW 39.33.020.

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

Sec. 1. RCW 39.33.020 and 1981 c 96 s 2 are each amended to read as follows:

Before disposing of surplus property with an estimated value of more than ~~((five))~~ fifty thousand dollars, the state or a political subdivision shall hold a public hearing in the county where the property or the greatest portion thereof is located. At least ten days but not more than twenty-five days prior to ~~((such))~~ the hearing, there shall be published a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing at least once in a newspaper of general circulation in the area where the property is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the property is located. If real property is involved, the public notice and news release shall identify the property using a description which can easily be understood by the public. If the surplus is real property, the public notice and news release shall also describe the proposed use of the lands involved. If there is a failure to substantially comply with the procedures set forth in this section, then the sale, transfer, exchange, lease, or other disposal shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the disposal agreement.

Passed the Senate March 14, 1995.

Passed the House April 10, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 124

[Engrossed Senate Bill 5888]

CHARGES FOR SEWERAGE AND STORM WATER CONTROL—CONSIDERATION
OF NONPROFIT PUBLIC BENEFIT STATUS OF LAND USER

AN ACT Relating to considerations for charges for sewerage and storm water control systems; and amending RCW 36.89.080, 36.94.140, 35.67.020, 35.67.190, and 35.92.020.

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

Sec. 1. RCW 36.89.080 and 1970 ex.s. c 30 s 7 are each amended to read as follows:

Any ~~((board of county commissioners))~~ county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing

of service to those served or receiving benefits or to be served or to receive benefits from any storm water control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the ~~((board))~~ county legislative authority may in its discretion consider: (1) Services furnished or to be furnished~~((:));~~ (2) benefits received or to be received~~((:));~~ (3) the character and use of land~~((:))~~ or its water runoff characteristics; (4) the nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; or (5) any other matters which present a reasonable difference as a ground for distinction. ~~((Such))~~ The service charges and rates collected shall be deposited in a special fund or funds in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating storm water control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose.

Sec. 2. RCW 36.94.140 and 1990 c 133 s 2 are each amended to read as follows:

Every county, in the operation of a system of sewerage and/or water, shall have full jurisdiction and authority to manage, regulate, and control it and to fix, alter, regulate, and control the rates and charges for the service to those to whom such county service is available, and to levy charges for connection to ~~((such))~~ the system. The rates for availability of service and connection charges so charged must be uniform for the same class of customers or service.

In classifying customers served, service furnished or made available by such system of sewerage and/or water, or the connection charges, the ~~((board))~~ county legislative authority may consider any or all of the following factors:

- (1) The difference in cost of service to the various customers within or without the area;
- (2) The difference in cost of maintenance, operation, repair and replacement of the various parts of the systems;
- (3) The different character of the service furnished various customers;
- (4) The quantity and quality of the sewage and/or water delivered and the time of its delivery;
- (5) Capital contributions made to the system or systems, including, but not limited to, assessments;
- (6) The cost of acquiring the system or portions of the system in making system improvements necessary for the public health and safety; ~~((and))~~
- (7) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and
- (8) Any other matters which present a reasonable difference as a ground for distinction.

~~((Such))~~ The service charges and rates shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant

interest and principal amortization requirements, and all other charges necessary for the efficient and proper operation of the system.

Sec. 3. RCW 35.67.020 and 1991 c 347 s 17 are each amended to read as follows:

Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits, with full jurisdiction and authority to manage, regulate, and control them and to fix, alter, regulate, and control the rates and charges for ~~((the))~~ their use ~~((thereof: PROVIDED, That))~~. The rates charged must be uniform for the same class of customers or service.

In classifying customers served or service furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors: (1) The difference in cost of service to the various customers; (2) the location of the various customers within and without the city or town; (3) the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; (4) the different character of the service furnished various customers; (5) the quantity and quality of the sewage delivered and the time of its delivery; (6) the achievement of water conservation goals and the discouragement of wasteful water use practices; (7) capital contributions made to the system, including but not limited to, assessments; (8) the nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and (9) any other matters which present a reasonable difference as a ground for distinction.

Sec. 4. RCW 35.67.190 and 1965 c 7 s 35.67.190 are each amended to read as follows:

The legislative body of such city or town may provide by ordinance for revenues by fixing rates and charges for the furnishing of service to those served by its system of sewerage or system for refuse collection and disposal, which rates and charges shall be uniform for the same class of customer or service. In classifying customers served or service furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors: (1) The difference in cost of service to the various customers; (2) the location of the various customers within and without the city or town; (3) the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; (4) the different character of the service furnished various customers; (5) the quantity and quality of the sewage delivered and the time of its delivery; (6) capital contributions made to the system, including but not limited to, assessments; (7) the nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and (8) any other matters which present a reasonable difference as a ground for distinction.

If special indebtedness bonds or warrants are issued against the revenues, the legislative body shall by ordinance fix charges at rates which will be sufficient

to take care of the costs of maintenance and operation, bond and warrant principal and interest, sinking fund requirements, and all other expenses necessary for efficient and proper operation of the system.

All property owners within the area served by such sewerage system shall be compelled to connect their private drains and sewers with such city or town system, under such penalty as the legislative body of such city or town may by ordinance direct. Such penalty may in the discretion of such legislative body be an amount equal to the charge that would be made for sewer service if the property was connected to such system. All penalties collected shall be considered revenue of the system.

Sec. 5. RCW 35.92.020 and 1989 c 399 s 6 are each amended to read as follows:

A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate systems, plants, sites, or other facilities of sewerage, or solid waste handling as defined by RCW 70.95.030, and shall have full authority to manage, regulate, operate, control, and to fix the price of service of those systems, plants, sites, or other facilities within and without the limits of the city or town. The rates charged shall be uniform for the same class of customers or service. In classifying customers served or service furnished by a system or systems of sewerage, the legislative authority of the city or town may in its discretion consider any or all of the following factors: (1) The difference in cost of service to customers; (2) the location of customers within and without the city or town; (3) the difference in cost of maintenance, operation, repair, and replacement of the parts of the system; (4) the different character of the service furnished customers; (5) the quantity and quality of the sewage delivered and the time of its delivery; (6) capital contributions made to the systems, plants, sites, or other facilities, including but not limited to, assessments; (7) the nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and (8) any other factors that present a reasonable difference as a ground for distinction.

Passed the Senate March 14, 1995.

Passed the House April 10, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 125

[Senate Bill 5894]

TRANSPORTATION DEPARTMENT WETLANDS STRATEGIC PLAN

AN ACT Relating to wetlands owned by the department of transportation; and creating a new section.

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

NEW SECTION. Sec. 1. The department of transportation shall develop a strategic plan for the long-term monitoring and maintenance of wetlands owned by the department. The plan must consider:

(1) An evaluation of the long-term monitoring and maintenance costs of existing and planned sites;

(2) The feasibility of developing wetland banks that could be used by other public entities. Consideration must be given to allocating costs for the initial development of a bank and to prorating ongoing monitoring and maintenance costs;

(3) The feasibility of selling, contracting, or transferring title of department-owned wetland bank property or mitigation sites to other public agencies or nonprofit environmental corporations;

(4) A legal analysis of the state constitutional prohibition against lending of the state's credit;

(5) An analysis of the statutory barriers prohibiting mitigation of wetland losses on a regional or watershed basis and recommendations for achieving a regional or watershed approach to mitigation;

(6) A summary of planned or potential wetland banks; and

(7) An analysis of how wetland habitat can be valued and quantified and how mitigation credits could be developed.

The department shall present the strategic plan to the standing committees on transportation of the senate and the house of representatives no later than January 15, 1997.

Passed the Senate March 15, 1995.

Passed the House April 10, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 126

[Senate Bill 6011]

SCHOOL DISTRICTS—PURCHASE OF LIABILITY INSURANCE

AN ACT Relating to the purchase of liability insurance by school districts; and amending RCW 28A.400.350.

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

Sec. 1. RCW 28A.400.350 and 1993 c 492 s 226 are each amended to read as follows:

(1) The board of directors of any of the state's school districts may make available liability, life, health, health care, accident, disability and salary protection or insurance or any one of, or a combination of the enumerated types of insurance, or any other type of insurance or protection, for the members of the boards of directors, the students, and employees of the school district, and their dependents. Such coverage may be provided by contracts with private carriers,

with the state health care authority after July 1, 1990, pursuant to the approval of the authority administrator, or through self-insurance or self-funding pursuant to chapter 48.62 RCW, or in any other manner authorized by law. Except for health benefits purchased with nonstate funds as provided in RCW 28A.400.200, effective on and after October 1, 1995, health care coverage, life insurance, (~~liability insurance,~~) accidental death and dismemberment insurance, and disability income insurance shall be provided only by contracts with the state health care authority.

(2) Whenever funds are available for these purposes the board of directors of the school district may contribute all or a part of the cost of such protection or insurance for the employees of their respective school districts and their dependents. The premiums on such liability insurance shall be borne by the school district.

After October 1, 1990, school districts may not contribute to any employee protection or insurance other than liability insurance unless the district's employee benefit plan conforms to RCW 28A.400.275 and 28A.400.280.

(3) For school board members and students, the premiums due on such protection or insurance shall be borne by the assenting school board member or student. The school district may contribute all or part of the costs, including the premiums, of life, health, health care, accident or disability insurance which shall be offered to all students participating in interschool activities on the behalf of or as representative of their school or school district. The school district board of directors may require any student participating in extracurricular interschool activities to, as a condition of participation, document evidence of insurance or purchase insurance that will provide adequate coverage, as determined by the school district board of directors, for medical expenses incurred as a result of injury sustained while participating in the extracurricular activity. In establishing such a requirement, the district shall adopt regulations for waiving or reducing the premiums of such coverage as may be offered through the school district to students participating in extracurricular activities, for those students whose families, by reason of their low income, would have difficulty paying the entire amount of such insurance premiums. The district board shall adopt regulations for waiving or reducing the insurance coverage requirements for low-income students in order to assure such students are not prohibited from participating in extracurricular interschool activities.

(4) All contracts for insurance or protection written to take advantage of the provisions of this section shall provide that the beneficiaries of such contracts may utilize on an equal participation basis the services of those practitioners licensed pursuant to chapters 18.22, 18.25, 18.53, 18.57, and 18.71 RCW.

Passed the Senate March 10, 1995.
Passed the House April 10, 1995.
Approved by the Governor April 20, 1995.
Filed in Office of Secretary of State April 20, 1995.

CHAPTER 127

[Substitute Senate Bill 6028]

HARASSMENT OF A CHILD

AN ACT Relating to harassment; and amending RCW 10.14.020 and 10.14.040.

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

Sec. 1. RCW 10.14.020 and 1987 c 280 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) "Unlawful harassment" means a knowing and wilful course of conduct directed at a specific person which seriously alarms, annoys, ~~((or))~~ harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct is contact by a person over age eighteen that would cause a reasonable parent to fear for the well-being of their child.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

Sec. 2. RCW 10.14.040 and 1987 c 280 s 4 are each amended to read as follows:

There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction

where the relief is sought. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6) The parent or guardian of a child under age eighteen may petition for an order of protection to restrain a person over age eighteen from contact with that child upon a showing that contact with the person to be enjoined is detrimental to the welfare of the child.

Passed the Senate March 10, 1995.

Passed the House April 10, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 128

[Senate Bill 5200]

USE TAX—EXCEPTION FOR AIRCRAFT TRAINING EQUIPMENT TRANSFERRED TO WASHINGTON BECAUSE OF BASE CLOSURE

AN ACT Relating to use tax on aircraft training equipment transferred to Washington state as a result of base closure; 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 82.12 RCW to read as follows:

The provisions of this chapter shall not apply in respect to the use of naval aircraft training equipment transferred to Washington state from another naval installation in another state as a result of the base closure act, P.L. 101-510, as amended by P.L. 102-311, 102-484, 103-160, 103-337, and 103-421.

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 March 9, 1995.

Passed the House April 11, 1995.

Approved by the Governor April 20, 1995.

Filed in Office of Secretary of State April 20, 1995.

CHAPTER 129

[Initiative 159]

HARD TIME FOR ARMED CRIME ACT

AN ACT Relating to increasing penalties for armed crimes; amending RCW 9.94A.310, 9.94A.150, 9A.36.045, 9A.52.020, 9A.56.300, 9A.56.030, 9A.56.040, 9A.56.150, 9A.56.160, 9.41.040, and 10.95.020; reenacting and amending RCW 9.94A.320; adding new sections to chapter 9.94A RCW; adding a new section to chapter 9A.56 RCW; creating new sections; repealing 1994

1st sp.s. c 7 s 510; repealing 1994 1st sp.s. c 7 s 511; repealing 1994 1st sp.s. c 7 s 512; and prescribing penalties.

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

NEW SECTION. Sec. 1. FINDINGS AND INTENT. (1) The people of the state of Washington find and declare that:

(a) Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death.

(b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone who tries to stop the criminal acts; and aiding the criminal in escaping.

(c) Current law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements provided for many felonies, including murder, arson, manslaughter, and child molestation and many other sex offenses including child luring.

(d) Current law also fails to distinguish between gun-carrying criminals and criminals carrying knives or clubs.

(2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:

(a) Stigmatize the carrying and use of any deadly weapons for all felonies with proper deadly weapon enhancements.

(b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.

(c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to acquire firearms.

(d) Bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes.

Sec. 2. RCW 9.94A.310 and 1992 c 145 s 9 are each amended to read as follows:

FIREARM AND OTHER DEADLY WEAPON ENHANCEMENTS INCREASED.

(1) **TABLE 1**
Sentencing Grid

SERIOUSNESS SCORE:	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XV	Life Sentence without Parole/Death Penalty									
XIV	23y4m 240- 320	24y4m 250- 333	25y4m 261- 347	26y4m 271- 361	27y4m 281- 374	28y4m 291- 388	30y4m 312- 416	32y10m 338- 450	36y 370- 493	40y 411- 548

XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	164	178	192	205	219	233	260	288	342	397
XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
	93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
	123	136	147	160	171	184	216	236	277	318
XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
	78-	86-	95	102-	111-	120-	146-	159-	185-	210-
	102	114	125	136	147	158	194	211	245	280
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
	68	75	82	89	96	102	130	144	171	198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
	41	48	54	61	68	75	102	116	144	171
VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
	27	34	41	48	54	61	89	102	116	144
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
	14	20	27	34	41	48	61	75	89	102
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90 Days	2-	3-	4-	12+-	14-	17-	22-	33-	43-
		6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60 Days	0-90 Days	2-	2-	3-	4-	12+-	14-	17-	22-
			5	6	8	12	14	18	22	29

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.

(3) The following additional times shall be added to the presumptive sentence for felony crimes committed after the effective date of this section if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years or both and not covered under (f) of this subsection.

(b) Three years for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Eighteen months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after the effective date of this section under (a), (b), and/or (c) of this subsection or subsection (4) (a), (b), and/or (c) of this section, or both, any and all firearm enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall not run concurrently with any other sentencing provisions.

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030.

(4) The following additional times shall be added to the presumptive sentence for felony crimes committed after the effective date of this section if the offender or an accomplice was armed with a deadly weapon as defined in this chapter other than a firearm as defined in RCW 9A.10.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9A.10.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the presumptive ((range)) sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) ((24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.200), or Kidnapping 1 (RCW 9A.40.020))) Two years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) ((18 months for Burglary 1 (RCW 9A.52.020))) One year for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) ((12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Assault of a Child 2 (RCW 9A.36.130), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense)) Six months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after the effective date of this section under (a), (b), and/or (c) of this subsection or subsection (3) (a), (b), and/or (c) of this section, or both, any and all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall not run concurrently with any other sentencing provisions.

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense the statutory maximum sentence shall be the

presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030.

~~((4))~~ (5) The following additional times shall be added to the presumptive sentence if the offender or an accomplice committed the offense while in a county jail or state correctional facility as that term is defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility as that term is defined in this chapter, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the presumptive sentence (~~range~~) determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(1)(i) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(1)(ii), (iii), and (iv);

(c) Twelve months for offenses committed under RCW 69.50.401(d).

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

~~((5))~~ (6) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

Sec. 3. RCW 9.94A.320 and 1992 c 145 s 4 and 1992 c 75 s 3 are each reenacted and amended to read as follows:

PENALTIES INCREASED FOR OTHER CRIMES INVOLVING FIREARMS.

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XIII	Murder 2 (RCW 9A.32.050)
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120)
XI	Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
X	Kidnapping 1 (RCW 9A.40.020) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Child Molestation 1 (RCW 9A.44.083)

- Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1))
- Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- IX Assault of a Child 2 (RCW 9A.36.130)
- Robbery 1 (RCW 9A.56.200)
- Manslaughter 1 (RCW 9A.32.060)
- Explosive devices prohibited (RCW 70.74.180)
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- Endangering life and property by explosives with threat to human being (RCW 70.74.270)
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Controlled Substance Homicide (RCW 69.50.415)
- Sexual Exploitation (RCW 9.68A.040)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- VIII Arson 1 (RCW 9A.48.020)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
- Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug or by the operation of any vehicle in a reckless manner (RCW 46.61.520)

- VII
- Burglary 1 (RCW 9A.52.020)
 - Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
 - Introducing Contraband 1 (RCW 9A.76.140)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
 - Child Molestation 2 (RCW 9A.44.086)
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
 - Involving a minor in drug dealing (RCW 69.50.401(f))
 - Reckless Endangerment 1 (RCW 9A.36.045)
 - Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- VI
- Bribery (RCW 9A.68.010)
 - Manslaughter 2 (RCW 9A.32.070)
 - Rape of a Child 3 (RCW 9A.44.079)
 - Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
 - Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
 - Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
 - Incest 1 (RCW 9A.64.020(1))
 - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
 - Intimidating a Judge (RCW 9A.72.160)
 - Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
 - Theft of a Firearm (RCW 9A.56.— (section 432, chapter 7, Laws of 1994 1st sp. sess., as amended by section 10 of this act))

- V
- Criminal Mistreatment 1 (RCW 9A.42.020)
 - Rape 3 (RCW 9A.44.060)
 - Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
 - Child Molestation 3 (RCW 9A.44.089)
 - Kidnapping 2 (RCW 9A.40.030)
 - Extortion 1 (RCW 9A.56.120)
 - Incest 2 (RCW 9A.64.020(2))
 - Perjury 1 (RCW 9A.72.020)
 - Extortionate Extension of Credit (RCW 9A.82.020)
 - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
 - Rendering Criminal Assistance 1 (RCW 9A.76.070)
 - Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
 - Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
 - Possession of a Stolen Firearm (RCW 9A.56.— (section 13 of this act))
- IV
- Residential Burglary (RCW 9A.52.025)
 - Theft of Livestock 1 (RCW 9A.56.080)
 - Robbery 2 (RCW 9A.56.210)
 - Assault 2 (RCW 9A.36.021)
 - Escape 1 (RCW 9A.76.110)
 - Arson 2 (RCW 9A.48.030)
 - Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
 - Malicious Harassment (RCW 9A.36.080)
 - Threats to Bomb (RCW 9.61.160)
 - Willful Failure to Return from Furlough (RCW 72.66.060)
 - Hit and Run — Injury Accident (RCW 46.52.020(4))
 - Vehicular Assault (RCW 46.61.522)

- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(ii) through (iv))
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal mistreatment 2 (RCW 9A.42.030)
- Extortion 2 (RCW 9A.56.130)
- Unlawful Imprisonment (RCW 9A.40.040)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Custodial Assault (RCW 9A.36.100)
- Unlawful possession of firearm ~~((or pistol by felon (RCW 9.41.040)))~~ in the second degree (RCW 9.41.040(1)(b))
- Harassment (RCW 9A.46.020)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- Burglary 2 (RCW 9A.52.030)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))

- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- II Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- ~~((Reckless Endangerment 1 (RCW 9A.36.045)))~~
- Escape from Community Custody (RCW 72.09.310)
- I Theft 2 (RCW 9A.56.040)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)

Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine) (RCW 69.50.401(d))

NEW SECTION. Sec. 4. PROSECUTING STANDARDS TIGHTENED FOR ARMED OFFENDERS. Notwithstanding the current placement or listing of crimes in categories or classifications of prosecuting standards for deciding to prosecute under RCW 9.94A.440(2), any and all felony crimes involving any deadly weapon special verdict under RCW 9.94A.125, any deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, and any and all felony crimes as defined in RCW 9.94A.310 (3)(f) or (4)(f), or both, which are excluded from the deadly weapon enhancements shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.440(2) as crimes against persons.

NEW SECTION. Sec. 5. ALL PLEA AGREEMENTS AND SENTENCES FOR VIOLENT, MOST SERIOUS, AND ARMED OFFENDERS MADE A PUBLIC RECORD. Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes shall be made and retained as public records if the felony crime involves:

- (1) Any violent offense as defined in this chapter;
- (2) Any most serious offense as defined in this chapter;
- (3) Any felony with a deadly weapon special verdict under RCW 9.94A.125;
- (4) Any felony with any deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both; and/or
- (5) The felony crimes of possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony.

NEW SECTION. Sec. 6. JUDICIAL RECORDS KEPT FOR SENTENCES OF VIOLENT, MOST SERIOUS, AND ARMED OFFENDERS. (1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under section 5 of this act shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under section 5 of this act. Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.

(2) The sentencing guidelines commission shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section and shall compile a yearly and cumulative judicial record of each sentencing judge in regards to his or her sentencing practices for any and all felony crimes involving:

- (a) Any violent offense as defined in this chapter;
- (b) Any most serious offense as defined in this chapter;
- (c) Any felony with any deadly weapon special verdict under RCW 9.94A.125;
- (d) Any felony with any deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both; and/or
- (e) The felony crimes of possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony.

(3) The sentencing guidelines commission shall compare each individual judge's sentencing practices to the standard or presumptive sentence range for any and all felony crimes listed in subsection (2) of this section for the appropriate offense level as defined in RCW 9.94A.320, offender score as defined in RCW 9.94A.360, and any applicable deadly weapon enhancements as defined in RCW 9.94A.310 (3) or (4), or both. These comparative records shall be retained and made available to the public for review in a current, newly created or reworked official published document by the sentencing guidelines commission.

(4) Any and all felony sentences which are either above or below the standard or presumptive sentence range in subsection (3) of this section shall also mark whether the prosecuting attorney in the case also recommended a similar sentence, if any, which was either above or below the presumptive sentence range and shall also indicate if the sentence was in conjunction with an approved alternative sentencing option including a first-time offender waiver, sex offender sentencing alternative, or other prescribed sentencing option.

(5) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the sentencing guidelines commission as required in subsection (2) of this section, the sentencing guidelines commission shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the sentencing guidelines commission.

Sec. 7. RCW 9.94A.150 and 1992 c 145 s 8 are each amended to read as follows:

GOOD TIME REMOVED FOR DEADLY WEAPON ENHANCEMENTS.
No person serving a sentence imposed pursuant to this chapter and committed

to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department, may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned early release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department of corrections, the county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned early release time. In the case of an offender who has been convicted of a felony committed after the effective date of this section that involves any applicable deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, shall not receive any good time credits or earned early release time for that portion of his or her sentence that results from any deadly weapon enhancements. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case shall the aggregate earned early release time exceed one-third of the total sentence;

(2) A person convicted of a sex offense or an offense categorized as a serious violent offense, 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 may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned early release time pursuant to subsection (1) of this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(5) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing (~~him~~) himself or herself in the community;

(6) The governor may pardon any offender;

(7) The department of corrections may release an offender from confinement any time within ten days before a release date calculated under this section; and

(8) An offender may leave a correctional facility prior to completion of his sentence if the sentence has been reduced as provided in RCW 9.94A.160.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.120(4).

Sec. 8. RCW 9A.36.045 and 1989 c 271 s 109 are each amended to read as follows:

RECKLESS ENDANGERMENT IN THE FIRST DEGREE. (1) A person is guilty of reckless endangerment in the first degree when he or she recklessly discharges a firearm as defined in RCW 9.41.010 in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge.

(2) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

(3) Reckless endangerment in the first degree is a class ((E)) B felony.

Sec. 9. RCW 9A.52.020 and 1975 1st ex.s. c 260 s 9A.52.020 are each amended to read as follows:

BURGLARY IN THE FIRST DEGREE. (1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a ((dwelling)) building and if, in entering or while in the ((dwelling)) building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person therein.

(2) Burglary in the first degree is a class A felony.

Sec. 10. RCW 9A.56.300 and 1994 1st sp.s. c 7 s 432 are each amended to read as follows:

THEFT OF A FIREARM. (1) A person is guilty of theft of a firearm if ((the person:

((a)) he or she commits a theft of ((a)) any firearm((; or

((b) Possesses, sells, or delivers a stolen firearm)).

(2) This section applies regardless of the ((stolen firearm's)) value of the firearm taken in the theft.

(3) ((“Possession, sale, or delivery of a stolen firearm” as used in this section has the same meaning as “possessing stolen property” in RCW

9A.56.140) Each firearm taken in the theft under this section is a separate offense.

(4) The definition of "theft" and the defense allowed against the prosecution for theft under RCW 9A.56.020 shall apply to the crime of theft of a firearm.

(5) As used in this section, "firearm" means any firearm as defined in RCW 9.41.010.

(6) Theft of a firearm is a class ((C)) B felony.

Sec. 11. RCW 9A.56.030 and 1975 1st ex.s. c 260 s 9A.56.030 are each amended to read as follows:

THEFT IN THE FIRST DEGREE OTHER THAN A FIREARM. (1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) one thousand five hundred dollars in value other than a firearm as defined in RCW 9.41.010; or

(b) Property of any value other than a firearm as defined in RCW 9.41.010 taken from the person of another.

(2) Theft in the first degree is a class B felony.

Sec. 12. RCW 9A.56.040 and 1994 1st sp.s. c 7 s 433 are each amended to read as follows:

THEFT IN THE SECOND DEGREE OTHER THAN A FIREARM. (1) A person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) two hundred and fifty dollars in value other than a firearm as defined in RCW 9.41.010, but does not exceed one thousand five hundred dollars in value; or

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant; or

(c) An access device; or

(d) A motor vehicle, of a value less than one thousand five hundred dollars.

(2) Theft in the second degree is a class C felony.

NEW SECTION. **Sec. 13.** A new section is added to chapter 9A.56 RCW to read as follows:

POSSESSING A STOLEN FIREARM. (1) A person is guilty of possessing a stolen firearm if he or she possesses, carries, delivers, sells, or is in control of a stolen firearm.

(2) This section applies regardless of the stolen firearm's value.

(3) Each stolen firearm possessed under this section is a separate offense.

(4) The definition of "possessing stolen property" and the defense allowed against the prosecution for possessing stolen property under RCW 9A.56.140 shall apply to the crime of possessing a stolen firearm.

(5) As used in this section, "firearm" means any firearm as defined in RCW 9.41.010.

(6) Possessing a stolen firearm is a class B felony.

Sec. 14. RCW 9A.56.150 and 1975 1st ex.s. c 260 s 9A.56.150 are each amended to read as follows:

POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE OTHER THAN A FIREARM. (1) A person is guilty of possessing stolen property in the first degree if he or she possesses stolen property other than a firearm as defined in RCW 9.41.010 which exceeds one thousand five hundred dollars in value.

(2) Possessing stolen property in the first degree is a class B felony.

Sec. 15. RCW 9A.56.160 and 1994 1st sp.s. c 7 s 434 are each amended to read as follows:

POSSESSING STOLEN PROPERTY IN THE SECOND DEGREE OTHER THAN A FIREARM. (1) A person is guilty of possessing stolen property in the second degree if:

(a) He or she possesses stolen property other than a firearm as defined in RCW 9.41.010 which exceeds two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value; or

(b) He or she possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(c) He or she possesses a stolen access device; or

(d) He or she possesses a stolen motor vehicle of a value less than one thousand five hundred dollars.

(2) Possessing stolen property in the second degree is a class C felony.

Sec. 16. RCW 9.41.040 and 1994 1st sp.s. c 7 s 402 are each amended to read as follows:

UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST AND SECOND DEGREE—OWNERSHIP, POSSESSION OF FIREARMS PROHIBITED FROM CERTAIN PERSONS. (1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm(=

(a)) after having previously been convicted in this state or elsewhere of ((a)) any serious offense((= a domestic violence offense enumerated in RCW 10.99.020(2), a harassment offense enumerated in RCW 9A.46.060, or of a felony in which a firearm was used or displayed)) as defined in this chapter, residential burglary, reckless endangerment in the first degree, any felony violation of the uniform controlled substances act, chapter 69.50 RCW, classified as a class A or class B felon or with a maximum sentence of at least ten years or both, or equivalent statutes of another jurisdiction, except as otherwise provided in subsection (3) or (4) of this section;

(b) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under (a) of this subsection for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm;

(i) After having previously been convicted of any remaining felony violation of the uniform controlled substances act, chapter 69.50 RCW, or equivalent statutes of another jurisdiction not specifically listed as prohibiting firearm possession under (a) of this subsection, any remaining felony in which a firearm was used or displayed and the felony is not specifically listed as prohibiting firearm possession under (a) of this subsection, any domestic violence offense enumerated in RCW 10.99.020(2), or any harassment offense enumerated in RCW 9A.46.060, except as otherwise provided in subsection (3) or (4) of this section;

((e)) (ii) After having previously been convicted on three occasions within five years of driving a motor vehicle or operating a vessel while under the influence of intoxicating liquor or any drug, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.— (section 404, chapter 7, Laws of 1994 1st sp. sess.);

((e)) (iii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.— (section 404, chapter 7, Laws of 1994 1st sp. sess.); and/or

(iv) If the person is under eighteen years of age, except as provided in RCW 9.41.— (section 403, chapter 7, Laws of 1994 1st sp. sess.).

(2)(a) Unlawful possession of a firearm in the first degree is a class ((E)) B felony, punishable under chapter 9A.20 RCW.

(b) Unlawful possession of a firearm in the second degree is a class C felony, punishable under chapter 9A.20 RCW.

(3) As used in this section, a person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(4) Notwithstanding subsection (1) of this section, a person convicted of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401(a) and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) of this section and

has not previously been convicted of a sex offense prohibiting firearm ownership under subsection (1) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(a) Under RCW 9.41.— (section 404, chapter 7, Laws of 1994 1st sp. sess.); and/or

(b) After five or more consecutive years in the community without being convicted or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.360.

~~((6)(a) A person who has been committed by court order for treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW, or equivalent statutes of another jurisdiction, may not possess, in any manner, a firearm as defined in RCW 9.41.010.~~

~~(b) At the time of commitment, the court shall specifically state to the person under (a) of this subsection and give the person notice in writing that the person is barred from possession of firearms.~~

~~(e) The secretary of social and health services shall develop appropriate rules to create an approval process under this subsection. The rules must provide for the immediate restoration of the right to possess a firearm upon a showing in a court of competent jurisdiction that a person no longer is required to participate in an inpatient or outpatient treatment program, and is no longer required to take medication to treat any condition related to the commitment. Unlawful possession of a firearm under this subsection shall be punished as a class C felony under chapter 9A.20 RCW.)~~

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter . . . , Laws of 1995 (this act) shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both,

then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

Sec. 17. RCW 10.95.020 and 1981 c 138 s 2 are each amended to read as follows:

DEATH PENALTY AUTHORIZED FOR DRIVE-BY SHOOTERS, MURDERS FOR GROUP MEMBERSHIP, AND RESIDENTIAL BURGLARS WHO KILL. A person is guilty of aggravated first degree murder if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm or both to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board (~~of prison terms and paroles~~); or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

~~((7))~~ (9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

~~((8))~~ (10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

~~((9))~~ (11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

- (a) Robbery in the first or second degree;
- (b) Rape in the first or second degree;
- (c) Burglary in the first or second degree or residential burglary;
- (d) Kidnapping in the first degree; or
- (e) Arson in the first degree;

~~((10))~~ (12) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim.

NEW SECTION. Sec. 18. OFFENDER NOTIFICATION AND WARNING. Any and all law enforcement agencies and personnel, criminal justice attorneys, sentencing judges, and state and local correctional facilities and personnel may, but are not required to, give any and all offenders either written or oral notice, or both, of the sanctions imposed and criminal justice changes regarding armed offenders, including but not limited to the subjects of:

(1) Felony crimes involving any deadly weapon special verdict under RCW 9.94A.125;

(2) Any and all deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, as well as any federal firearm, ammunition, or other deadly weapon enhancements;

(3) Any and all felony crimes requiring the possession, display, or use of any deadly weapon as well as the many increased penalties for these crimes including the creation of theft of a firearm and possessing a stolen firearm;

(4) New prosecuting standards established for filing charges for all crimes involving any deadly weapons;

(5) Removal of good time for any and all deadly weapon enhancements; and

(6) Providing the death penalty for those who commit first degree murder: (a) To join, maintain, or advance membership in an identifiable group; (b) as part of a drive-by shooting; or (c) to avoid prosecution as a persistent offender as defined in RCW 9.94A.030.

NEW SECTION. Sec. 19. REPEALER. The following acts or parts of acts are each repealed:

- (1) 1994 1st sp.s. c 7 s 510;
- (2) 1994 1st sp.s. c 7 s 511; and
- (3) 1994 1st sp.s. c 7 s 512.

NEW SECTION. **Sec. 20. CODIFICATION.** Sections 4 through 6 of this act are each added to chapter 9.94A RCW.

NEW SECTION. **Sec. 21. SHORT TITLE.** This act shall be known and cited as the hard time for armed crime act.

NEW SECTION. **Sec. 22. 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. 23. CAPTIONS.** Captions as used in this act do not constitute any part of the law.

Passed the House January 27, 1995.

Passed the Senate April 20, 1995.

Originally filed in Office of Secretary of State April 15, 1994.

Filed in Office of Secretary of State April 21, 1995.

CHAPTER 130

[Substitute Senate Bill 5992]

WORK FORCE TRAINING AND EDUCATION COORDINATING BOARD—REVISED DUTIES

AN ACT Relating to the work force training and education coordinating board; amending RCW 28C.18.050 adding new sections to chapter 28C.18 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** (1) The legislature continues to recognize the vital role that work force development efforts play in equipping the state's workers with the skills they need to succeed in an economy that requires higher levels of skill and knowledge. The legislature also recognizes that businesses are increasingly relying on the state's work force development programs and expect them to be responsive to their changing skill requirements. The state benefits from a work force development system that allows firms and workers to be highly competitive in global markets.

(2) The establishment of the work force training and education coordinating board was an integral step in developing a strategic approach to work force development. For the coordinating board to carry out its intended role, the board must be able to give unambiguous guidance to operating agencies, the governor, and the legislature. It is the intent of this act to clarify the preeminent role intended for the work force training and education coordinating board in coordination and policy development of the state's work force development efforts.

(3) In the event that federal work force development funds are block granted to the state, it is the intent of the legislature to seek the broadest possible input,

from local and state-wide organizations concerned with work force development, on the allocation of the federal funds.

(4) For purposes of sections 2 and 4 through 6 of this act, the term "program" shall not refer to the activities of individual institutions such as individual community or technical colleges, common schools, service delivery areas, or job service centers; nor shall it refer to individual fields of study or courses.

NEW SECTION. Sec. 2. (1) The state comprehensive plan for work force training and education shall be updated every two 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 updates. The plan shall then become the state's work force training policy unless legislation is enacted to alter the policies set forth in the plan.

(2) The comprehensive plan shall include work force training role and mission statements for the work force development programs of operating agencies represented on the board and sufficient specificity regarding expected actions by the operating agencies to allow them to carry out actions consistent with the comprehensive plan.

(3) Operating agencies represented on the board shall have operating plans for their work force development efforts that are consistent with the comprehensive plan and that provide detail on implementation steps they will take to carry out their responsibilities under the plan. Each operating agency represented on the board shall provide an annual progress report to the board.

(4) The comprehensive plan shall include recommendations to the legislature and the governor on the modification, consolidation, initiation, or elimination of work force training and education programs in the state.

(5) The board shall report to the appropriate legislative policy committees by December 1 of each year on its progress in implementing the comprehensive plan and on the progress of the operating agencies in meeting their obligations under the plan.

Sec. 3. RCW 28C.18.050 and 1991 c 238 s 6 are each amended to read as follows:

(1) The board shall be designated as the state board of vocational education as provided for in P.L. 98-524, as amended, and shall perform such functions as is necessary to comply with federal directives pertaining to the provisions of such law.

(2) The board shall perform the functions of the human resource investment council as provided for in the federal job training partnership act, P.L. 97-300, as amended.

(3) The board shall provide policy advice for any federal act pertaining to work force development that is not required by state or federal law to be provided by another state body.

(4) Upon enactment of new federal initiatives relating to work force development, the board shall advise the governor and the legislature on mechanisms for integrating the federal initiatives into the state's work force development system and make recommendations on the legislative or administrative measures necessary to streamline and coordinate state efforts to meet federal guidelines.

(5) The board shall monitor for consistency with the state comprehensive plan for work force training and education the policies and plans established by the state job training coordinating council, the advisory council on adult education, and the Washington state plan for adult basic education, and provide guidance for making such policies and plans consistent with the state comprehensive plan for work force training and education.

NEW SECTION. Sec. 4. (1) The board shall specify, by December 31, 1995, the common core data to be collected by the operating agencies of the state training system and the standards for data collection and maintenance required in RCW 28C.18.060(8).

(2) The minimum standards for program evaluation by operating agencies required in RCW 28C.18.060(9) shall include biennial program evaluations; the first of such evaluations shall be completed by the operating agencies July 1, 1996. The program evaluation of adult basic skills education shall be provided by the advisory council on adult education.

(3) The board shall complete, by January 1, 1996, its first outcome-based evaluation and, by September 1, 1996, its nonexperimental net-impact and cost-benefit evaluations of the training system. The outcome, net-impact, and cost-benefit evaluations shall for the first evaluations, include evaluations of each of the following programs: Secondary vocational-technical education, work-related adult basic skills education, postsecondary work force training, job training partnership act titles II and III, as well as of the system as a whole.

(4) The board shall use the results of its outcome, net-impact, and cost-benefit evaluations to develop and make recommendations to the legislature and the governor for the modification, consolidation, initiation, or elimination of work force training and education programs in the state.

The board shall perform the requirements of this section in cooperation with the operating agencies.

NEW SECTION. Sec. 5. The board shall, by January 1, 1996, and biennially thereafter: (1) Assess the total demand for training from the perspective of workers, and from the perspective of employers; (2) assess the available supply of publicly and privately provided training which workers and employers are demanding; (3) assess the costs to the state of meeting the demand; and (4) present the legislature and the governor with a strategy for bridging the gap between the supply and the demand for training services.

NEW SECTION. Sec. 6. The board shall, in cooperation with the operating agencies, by January 1, 1996:

(1) Identify policies to reduce administrative and other barriers to efficient operation of the state's work force development system and barriers to improved coordination of work force development in the state. These policies shall include waivers of statutory requirements and administrative rules, as well as implementation of one-stop access to work force development services and school-to-work transition;

(2) Identify ways for operating agencies to share resources, instructors, and curricula through collaboration with other public and private entities to increase training opportunities and reduce costs; and

(3) Report to the governor and the appropriate legislative committees its recommendations for any statutory changes necessary to enhance operational efficiencies or improve coordination. The board shall work with the operating agencies of the state's work force development system to reduce administrative barriers that do not require statutory changes.

NEW SECTION. **Sec. 7.** Sections 2 and 4 through 6 of this act are each added to chapter 28C.18 RCW.

Passed the Senate April 13, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 22, 1995.

Filed in Office of Secretary of State April 22, 1995.

CHAPTER 131

[Substitute Senate Bill 5209]

WATER OR SEWER SYSTEMS—EXTENSION BEYOND EXISTING CORPORATE BOUNDARIES

AN ACT Relating to the extension of water or sewer systems outside of existing corporate boundaries; amending RCW 36.93.090, and declaring an emergency.

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

Sec. 1. RCW 36.93.090 and 1987 c 477 s 2 are each amended to read as follows:

Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file within one hundred eighty days a notice of intention with the board: PROVIDED, That when the initiator is the legislative body of a governmental unit, the notice of intention may be filed immediately following the body's first acceptance or approval of the action. The board may review any such proposed actions pertaining to:

(1) The: (a) Creation, incorporation, or change in the boundary, other than a consolidation, of any city, town, or special purpose district; (b) consolidation of special purpose districts, but not including consolidation of cities and towns; or (c) dissolution or disincorporation of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation

of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter 36.96 RCW: PROVIDED, That the change in the boundary of a city or town arising from the annexation of contiguous city or town owned property held for a public purpose shall be exempted from the requirements of this section; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water district pursuant to RCW 57.08.065 or chapter 57.40 RCW, as now or hereafter amended; or

(4) The establishment of or change in the boundaries of a mutual sewer and water system or separate water system by a sewer district pursuant to RCW 56.20.015 or chapter 56.36 RCW, as now or hereafter amended; or

(5) The extension of permanent water or sewer service outside of its existing ~~((corporate boundaries))~~ service area by a city, town, or special purpose district. The service area of a city, town, or special purpose district shall include all of the area within its corporate boundaries plus, (a) for extensions of water service, the area outside of the corporate boundaries which it is designated to serve pursuant to a coordinated water system plan approved in accordance with RCW 70.116.050; and (b) for extensions of sewer service, the area outside of the corporate boundaries which it is designated to serve pursuant to a comprehensive sewerage plan approved in accordance with chapter 36.94 RCW and RCW 90.48.110.

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 17, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 24, 1995.

Filed in Office of Secretary of State April 24, 1995.

CHAPTER 132

[Senate Bill 5575]

ANATOMICAL GIFTS BY MINORS

AN ACT Relating to anatomical gift by persons under the age of eighteen; and amending RCW 68.50.540

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

Sec. 1. RCW 68.50.540 and 1993 c 228 s 3 are each amended to read as follows:

(1) An individual who is at least eighteen years of age, or an individual who is at least sixteen years of age as provided in subsection (12) of this section, may (a) make an anatomical gift for any of the purposes stated in RCW 68.50.570(1), (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 RCW 68.50.550.

(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.

(12) An individual who is under the age of eighteen, but is at least sixteen years of age, may make an anatomical gift as provided by subsection (2) of this section, if the document of gift is also signed by either parent or a guardian of the donor. A document of gift signed by a donor under the age of eighteen that is not signed by either parent or a guardian shall not be considered valid until the person reaches the age of eighteen, but may be considered as evidence that the donor has not refused permission to make an anatomical gift under the provisions of RCW 68.50.550.

Passed the Senate March 7, 1995.

Passed the House April 5, 1995.

Approved by the Governor April 26, 1995.

Filed in Office of Secretary of State April 26, 1995.

CHAPTER 133

[House Bill 1012]

LOANS BY PAWNBROKERS

AN ACT Relating to loans made by pawnbrokers; and amending RCW 19.60.010, 19.60.060, and 19.60.061.

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

Sec. 1. RCW 19.60.010 and 1991 c 323 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) Melted metals means metals derived from metal junk or precious metals that have been reduced to a melted state from other than ore or ingots which are produced from ore that has not previously been processed.

(2) Metal junk means any metal that has previously been milled, shaped, stamped, or forged and that is no longer useful in its original form, except precious metals.

(3) Nonmetal junk means any nonmetal, commonly discarded item that is worn out, or has outlasted its usefulness as intended in its original form except nonmetal junk does not include an item made in a former period which has enhanced value because of its age.

(4) Pawnbroker means every person engaged, in whole or in part, in the business of loaning money on the security of pledges of personal property, or deposits or conditional sales of personal property, or the purchase or sale of personal property.

(5) Precious metals means gold, silver, and platinum.

(6) Second-hand dealer means every person engaged in whole or in part in the business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, second-hand property including metal junk, melted metals, precious metals, whether or not the person maintains a fixed place of business within the state. Second-hand dealer also includes persons or entities conducting business at flea markets or swap meets, more than three times per year.

(7) Second-hand property means any item of personal property offered for sale which is not new, including metals in any form, except postage stamps, coins that are legal tender, bullion in the form of fabricated hallmarked bars, used books, and clothing of a resale value of seventy-five dollars or less, except furs.

(8) Transaction means a pledge, or the purchase of, or consignment of, or the trade of any item of personal property by a pawnbroker or a second-hand dealer from a member of the general public.

(9) ~~((Term of the loan as defined in this chapter shall be set for a period of thirty days to include the date of the loan.))~~ "Loan period" means the period of time from the date the loan is made until the date the loan is paid off, the loan is in default, or the loan is refinanced and new loan documents are issued, including all grace or extension periods.

Sec. 2. RCW 19.60.060 and 1991 c 323 s 7 are each amended to read as follows:

All pawnbrokers are authorized to charge and receive interest and other fees at the following rates for money on the security of personal property actually received in pledge:

(1) The interest for the loan period shall not exceed:

(a) For an amount loaned up to \$ 9.99 - interest at \$1.00 for each thirty-day period to include the loan date.

(b) For an amount loaned from \$ 10.00 to \$19.99 - interest at the rate of \$1.25 for each thirty-day period to include the loan date.

(c) For an amount loaned from \$20.00 to \$24.99 - interest at the rate of \$1.50 for each thirty-day period to include the loan date.

(d) For an amount loaned from \$25.00 to \$34.99 - interest at the rate of \$1.75 for each thirty-day period to include the loan date.

(e) For an amount loaned from \$35.00 to \$39.99 - interest at the rate of \$2.00 for each thirty-day period to include the loan date.

(f) For an amount loaned from \$40.00 to \$49.99 - interest at the rate of \$2.25 for each thirty-day period to include the loan date.

(g) For the amount loaned from \$50.00 to \$59.99 - interest at the rate of \$2.50 for each thirty-day period to include the loan date.

(h) For the amount loaned from \$60.00 to \$69.99 - interest at the rate of \$2.75 for each thirty-day period to include the loan date.

(i) For the amount loaned from \$70.00 to \$79.99 - interest at the rate of \$3.00 for each thirty-day period to include the loan date.

(j) For the amount loaned from \$80.00 to \$89.99 - interest at the rate of \$3.25 for each thirty-day period to include the loan date.

(k) For the amount loaned from \$90.00 to \$99.99 - interest at the rate of \$3.50 for each thirty-day period to include the loan date.

(l) For the amount loaned from \$100.00 or more - interest at the rate of three percent for each thirty-day period to include the loan date.

(2) The fee for the preparation of loan documents, pledges, or reports required under the laws of the United States of America, the state of Washington, or the counties, cities, towns, or other political subdivisions thereof, shall not exceed:

(a) For the amount loaned up to \$4.99 - the sum of \$.50;

(b) For the amount loaned from \$5.00 to \$9.99 - the sum of \$2.00;

(c) For the amount loaned from \$10.00 to \$14.99 - the sum of \$3.00;

(d) For the amount loaned from \$15.00 to \$19.99 - the sum of \$3.50.

(e) For the amount loaned from \$20.00 to \$24.99 - the sum of \$4.00.

(f) For the amount loaned from \$25.00 to \$29.99 - the sum of \$4.50.

(g) For the amount loaned from \$30.00 to \$34.99 - the sum of \$5.00.

(h) For the amount loaned from \$35.00 to \$39.99 - the sum of \$5.50.

(i) For the amount loaned from \$40.00 to \$44.99 - the sum of \$6.00.

(j) For the amount loaned from \$45.00 to \$49.99 - the sum of \$6.50.

(k) For the amount loaned from \$50.00 to \$54.99 - the sum of \$7.00.

(l) For the amount loaned from \$55.00 to \$59.99 - the sum of \$7.50.

(m) For the amount loaned from \$60.00 to \$64.99 - the sum of \$8.00.

(n) For the amount loaned from \$65.00 to \$69.99 - the sum of \$8.50.

(o) For the amount loaned from \$70.00 to \$74.99 - the sum of \$9.00.

(p) For the amount loaned from \$75.00 to \$79.99 - the sum of \$9.50.

(q) For the amount loaned from \$80.00 to \$84.99 - the sum of \$10.00.

(r) For the amount loaned from \$85.00 to \$89.99 - the sum of \$10.50.

(s) For the amount loaned from \$90.00 to \$94.99 - the sum of \$11.00.

(t) For the amount loaned from \$95.00 to \$99.99 - the sum of \$11.50.

(u) For the amount loaned from \$100.00 to \$104.99 - the sum of \$12.00.

(v) For the amount loaned from \$105.00 to \$109.99 - the sum of \$12.25.

(w) For the amount loaned from \$110.00 to \$114.99 - the sum of \$12.75.

(x) For the amount loaned from \$115.00 to \$119.99 - the sum of \$13.25.

(y) For the amount loaned from \$120.00 to \$124.99 - the sum of \$13.50.

(z) For the amount loaned from \$125.00 to \$129.99 - the sum of \$13.75.

(aa) For the amount loaned from \$130.00 to \$149.99 - the sum of \$14.50.

(bb) For the amount loaned from \$150.00 to \$174.99 - the sum of \$14.75.

(cc) For the amount loaned from \$175.00 to \$199.99 - the sum of \$15.00.

(dd) For the amount loaned from \$200.00 to \$224.99 - the sum of \$16.00.

- (ee) For the amount loaned from \$225.00 to \$249.99 - the sum of \$17.00.
 (ff) For the amount loaned from \$250.00 to \$274.99 - the sum of \$18.00.
 (gg) For the amount loaned from \$275.00 to \$299.99 - the sum of \$19.00.
 (hh) For the amount loaned from \$300.00 to \$324.99 - the sum of \$20.00.
 (ii) For the amount loaned from \$325.00 to \$349.99 - the sum of \$21.00.
 (jj) For the amount loaned from \$350.00 to \$374.99 - the sum of \$22.00.
 (kk) For the amount loaned from \$375.00 to \$399.99 - the sum of \$23.00.
 (ll) For the amount loaned from \$400.00 to \$424.99 - the sum of \$24.00.
 (mm) For the amount loaned from \$425.00 to \$449.99 - the sum of \$25.00.
 (nr) For the amount loaned from \$450.00 to \$474.99 - the sum of \$26.00.
 (oo) For the amount loaned from \$475.00 to \$499.99 - the sum of \$27.00.
 (pp) For the amount loaned from \$500.00 to \$524.99 - the sum of \$28.00.
 (qq) For the amount loaned from \$525.00 to \$549.99 - the sum of \$29.00.
 (rr) For the amount loaned from \$550.00 to \$599.99 - the sum of \$30.00.
 (ss) For the amount loaned from \$600.00 to \$699.99 - the sum of \$35.00.
 (tt) For the amount loaned from \$700.00 to \$799.99 - the sum of \$40.00.
 (uu) For the amount loaned from \$800.00 to \$899.99 - the sum of \$40.00.
 (vv) For the amount loaned from \$900.00 to \$999.99 - the sum of \$50.00.
 (ww) For the amount loaned from \$1000.00 to \$1499.99 - the sum of \$55.00.
 (xx) For the amount loaned from \$1500.00 to \$1999.99 - the sum of \$60.00.
 (yy) For the amount loaned from \$2000.00 to \$2499.99 - the sum of \$65.00.
 (zz) For the amount loaned from \$2500.00 to \$2999.99 - the sum of \$70.00.
 (aaa) For the amount loaned from \$3000.00 to \$3499.99 - the sum of \$75.00.
 (bbb) For the amount loaned from \$3500.00 to \$3999.99 - the sum of \$80.00.
 (ccc) For the amount loaned from \$4000.00 to \$4499.99 - the sum of \$85.00.
 (ddd) For the amount loaned from \$4500.00 or more - the sum of \$90.00.
 (3) Fees under subsection (2) of this section may be charged one time only ~~((during the term of the loan))~~ for each loan period; no additional fees, other than interest allowed under subsection (1) of this section, shall be charged for making the loan.

A copy of this section, set in twelve point type or larger, shall be posted prominently in each premises subject to this chapter.

Sec. 3. RCW 19.60.061 and 1991 c 323 s 8 are each amended to read as follows:

(1) The term of the loan shall be for a period of thirty days to include the date of the loan.

(2) A pawnbroker shall not sell any property received in pledge, until both the term of the loan and a grace period of a minimum of sixty days has expired. However, if a pledged article is not redeemed within the ninety-day period of ~~(both)~~ the term of the loan and the grace period, the pawnbroker shall have all

rights, title, and interest of that item of personal property. The pawnbroker shall not be required to account to the pledgor for the proceeds received from the disposition of that item. Any provision of law relating to the foreclosures and the subsequent sale of forfeited pledged items, shall not be applicable to any pledge as defined under this chapter, the title to which is transferred in accordance with this section.

~~((2))~~ (3) Every loan transaction entered into by a pawnbroker shall be evidenced by a written document, a copy of which shall be furnished to the pledgor. The document shall set forth the term of the loan~~((:))~~; the final date on which the loan is due and payable~~((:))~~; the loan preparation fee; the amount of interest charged every thirty days; the total amount due including the principal amount, the preparation fee, and all interest charges due if the loan is outstanding for the full ninety days allowed by the term and minimum grace period; and the annual percentage rate, and shall inform the pledgor of the pledgor's right to redeem the pledge at any time within ~~((sixty days after the expiration of the loan term))~~ the term of the loan or the minimum sixty-day grace period.

(4) If a person who has entered into a loan transaction with a pawnbroker in this state is unable to redeem and repay the loan on or before the expiration of the term of the loan plus the minimum sixty-day grace period, and that person wishes to retain his or her rights to use that item by rewriting the loan, and if both parties mutually agree, an existing loan transaction may be rewritten into a new loan, either in person or by mail. All applicable provisions of this chapter shall be followed in rewriting a loan, except that where an existing loan is rewritten by mail RCW 19.60.020(1) (a) and (g) shall not apply.

Passed the House January 27, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 134

[House Bill 1015]

CORRECTION OF DOUBLE AMENDMENTS

AN ACT Relating to correcting double amendments from the 1994 legislative sessions; reenacting RCW 13.40.020, 30.04.215, 30.08.020, 30.08.040, 30.08.095, 30.08.190, 32.32.025, 35.23.051, 35.23.101, 35.23.850, 35A.06.020, 36.21.011, 41.32.500, 84.40.080, and 84.48.050; and repealing RCW 35.23.310.

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

Sec. 1. RCW 13.40.020 and 1994 1st sp.s. c 7 s 520, 1994 c 271 s 803, and 1994 c 261 s 18 are each reenacted 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;

(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 or an order granting a deferred adjudication pursuant to RCW 13.40.125. 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. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision, the court shall order the juvenile to comply with the mandatory school attendance provisions of chapter 28A.225 RCW and to inform the school of the existence of this requirement. 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;

(5) "Community-based rehabilitation" means one or more of the following: Attendance of information classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, 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;

(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;

(8) "Court", when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(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. A successfully completed deferred adjudication shall not be considered part of the respondent's criminal history;

(10) "Department" means the department of social and health services;

(11) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring;

(12) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender, or any other person, community accountability board, or other 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 13.40.080, or any person, community accountability board, or other entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter. For purposes of this subsection, "community accountability board" means a board comprised of members of the local community in which the juvenile offender resides. The superior court shall appoint the members. The boards shall consist of at least three and not more than seven members. If possible, the board should include a variety of representatives from the community, such as a law enforcement officer, teacher or school administrator, high school student, parent, and business owner, and should represent the cultural diversity of the local community;

(13) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(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 pursuant to RCW 13.40.110 or who is otherwise under adult court jurisdiction;

(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;

(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;

(17) "Middle offender" means a person who has committed an offense and who is neither a minor or first offender nor a serious offender;

(18) "Minor or first offender" means a person 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; and
- (d) Three gross misdemeanors.

For purposes of this definition, current violations shall be counted as misdemeanors;

(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;

(20) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(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 expenses 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;

(22) "Secretary" means the secretary of the department of social and health services. "Assistant secretary" means the assistant secretary for juvenile rehabilitation for the department;

(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;

(24) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

(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;

(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;

(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;

(28) "Violent offense" means a violent offense as defined in RCW 9.94A.030.

EXPLANATORY NOTE

RCW 13.40.020 was amended three times by the 1994 legislature. Chapter 261 s 18 expanded "community-based rehabilitation" to include education or outpatient treatment programs to prevent animal cruelty; chapter 271 s 803 excluded felony stalking from the class C felony offenses included in the "minor or first offender" definition; and chapter 7 1st sp.s. s 520, among other changes, deleted all class C felony offenses from the "minor or first offender" definition. The purpose of this bill is to give effect to all amendments by reenacting the section including all amendments.

Sec. 2. RCW 30.04.215 and 1994 c 256 s 37 and 1994 c 92 s 20 are each reenacted to read as follows:

(1) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of December 31, 1993.

(2) A bank that desires to perform an activity that is not expressly authorized by subsection (1) of this section shall first apply to the director for authorization to conduct such activity. Within thirty days of the receipt of this application, the director shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe or unsound practice by the bank and whether the applicant is capable of performing such an activity. If the director finds the activity to be closely related to the business of banking and the bank is otherwise qualified, he or she shall forthwith inform the applicant that the activity is authorized. If the director determines that such activity is not closely related to the business of banking or the bank is not otherwise qualified, he or she shall forthwith inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the director shall be guided by the rulings of the board of governors of

the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies.

(3) In addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank may engage in other business activities that are determined by the director, by rule adopted pursuant to chapter 34.05 RCW, to be closely related to the business of banking, or necessary or convenient thereto, and the exercise thereof will promote the public convenience and advantage. Provided, however, that such other business activities shall also have been determined by the board of governors of the federal reserve system or by the United States congress to be closely related to the business of banking.

(4) Any activity which may be performed by a bank, except the taking of deposits, may be performed by (a) a corporation or (b) another entity approved by the director, which in either case is owned in whole or in part by the bank.

EXPLANATORY NOTE

RCW 30.04.215 was amended twice by the 1994 legislature. Chapter 92 s 20 made technical corrections, and chapter 256 s 37 made technical corrections and revised regulation of financial institutions and securities. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 3. RCW 30.08.020 and 1994 c 256 s 42 and 1994 c 92 s 43 are each reenacted to read as follows:

Persons desiring to incorporate a bank or trust company shall file with the director a notice of their intention to organize a bank or trust company in such form and containing such information as the director shall prescribe by rule, together with proposed articles of incorporation, which shall be submitted for examination to the director at his or her office in Olympia.

The proposed articles of incorporation shall state:

- (1) The name of such bank or trust company.
- (2) The city, village or locality and county where the head office of such corporation is to be located.
- (3) The nature of its business, whether that of a commercial bank, or a trust company.
- (4) The amount of its capital stock, which shall be divided into shares of a par or no par value as may be provided in the articles of incorporation.
- (5) The names and places of residence and mailing addresses of the persons who as directors are to manage the corporation until the first annual meeting of its stockholders.
- (6) If there is to be preferred or special classes of stock, a statement of preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class; or a statement that the shares of each class shall have the attributes as shall be determined by the bank's board of directors from time to time with the approval of the director.

(7) Any provision granting the shareholders the preemptive right to acquire additional shares of the bank and any provision granting shareholders the right to cumulate their votes.

(8) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the affairs of the corporation, including any provision restricting the transfer of shares, any provision which under this title is required or permitted to be set forth in the bylaws, and any provision permitted by RCW 23B.17.030.

(9) Any provision the incorporators elect to so set forth, not inconsistent with law or the purposes for which the bank is organized, or any provision limiting any of the powers granted in this title.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers granted in this title. The articles of incorporation shall be signed by all of the incorporators.

EXPLANATORY NOTE

RCW 30.08.020 was amended twice by the 1994 legislature. Chapter 92 s 43 made technical corrections, and chapter 256 s 42 made technical corrections and revised regulation of financial institutions and securities. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 4. RCW 30.08.040 and 1994 c 256 s 43 and 1994 c 92 s 45 are each reenacted to read as follows:

After the director is satisfied of the above facts, and, within six months of the date the notice of intention to organize has been received in his or her office, the director shall notify the incorporators to file executed articles of incorporation with the director in triplicate. Unless the director otherwise consents in writing, such articles shall be in the same form and shall contain the same information as the proposed articles and shall be filed with the director within ten days of such notice. Within thirty days after the receipt of such articles of incorporation, the director shall endorse upon each of the triplicates thereof, over his or her official signature, the word "approved," or the word "refused," with the date of such endorsement. In case of refusal the director shall forthwith return one of the triplicates, so endorsed, together with a statement explaining the reason for refusal to the person from whom the articles were received, which refusal shall be conclusive, unless the incorporators, within ten days of the issuance of such notice of refusal, shall request a hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended.

EXPLANATORY NOTE

RCW 30.08.040 was amended twice by the 1994 legislature. Chapter 92 s 45 made technical corrections, and chapter 256 s 43 made technical corrections and revised regulation of financial institutions and securities. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 5. RCW 30.08.095 and 1994 c 256 s 49 and 1994 c 92 s 56 are each reenacted to read as follows:

The director shall collect fees for the following services:

For filing application for certificate of authority and attendant investigation as outlined in the law;

For filing application for certificate conferring trust powers upon a state or national bank;

For filing articles of incorporation, or amendments thereof, or other certificates required to be filed in his or her office;

For filing merger agreement and attendant investigation;

For filing application to relocate main office or branch and attendant investigation;

For issuing each certificate of authority;

For furnishing copies of papers filed in his or her office, per page.

The director shall establish the amount of the fee for each of the above transactions, and for other services rendered.

Every bank or trust company 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 corresponding instruments, and also the same license fees as are required of general corporations.

EXPLANATORY NOTE

RCW 30.08.095 was amended twice by the 1994 legislature. Chapter 92 s 56 made technical corrections, and chapter 256 s 49 made technical corrections and revised regulation of financial institutions and securities. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 6. RCW 30.08.190 and 1994 c 256 s 51 and 1994 c 92 s 61 are each reenacted to read as follows:

(1) Every regular report shall be filed with the director within thirty days from the date of issuance of the notice. Every special report shall be filed with the director within such time as shall be specified by him or her in the notice therefor.

(2) Every bank and trust company which fails to file any report, required to be filed under subsection (1) of this section and within the time specified, shall be subject to a penalty of fifty dollars per day for each day's delay. A civil action for the recovery of any such penalty may be brought by the attorney general in the name of the state.

EXPLANATORY NOTE

RCW 30.08.190 was amended twice by the 1994 legislature. Chapter 92 s 61 made technical corrections, and chapter 256 s 51 made technical corrections and revised regulation of financial institutions and securities. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 7. RCW 32.32.025 and 1994 c 256 s 105 and 1994 c 92 s 352 are each reenacted to read as follows:

As used in this chapter, the following definitions apply, unless the context otherwise requires:

(1) Except as provided in RCW 32.32.230, an "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(3) An "applicant" is a mutual savings bank which has applied to convert pursuant to this chapter.

(4) The term "associate", when used to indicate a relationship with any person, means (a) any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities, (b) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, and (c) any relative who would be a "class A beneficiary" if the person were a decedent.

(5) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(6) The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, any similar certificate evidencing nonwithdrawable capital, or preferred stock, of a savings bank converted under this chapter or of a subsidiary institution or holding company.

(7) The term "charter" includes articles of incorporation, articles of reincorporation, and certificates of incorporation, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated person.

(8) Except as provided in RCW 32.32.230, the term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(9) The term "dealer" means any person who engages either for all or part of his or her time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(10) The term "deposits" refers to the deposits of a savings bank that is converting under this chapter, and may refer in addition to the deposits or share

accounts of any other financial institution that is converting to the stock form in connection with a merger with and into a savings bank.

(11) The term "director" means any director of a corporation, any trustee of a mutual savings bank, or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(12) The term "eligibility record date" means the record date for determining eligible account holders of a converting mutual savings bank.

(13) The term "eligible account holder" means any person holding a qualifying deposit as determined in accordance with RCW 32.32.180.

(14) The term "employee" does not include a director or officer.

(15) The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

(16) The term "market maker" means a dealer who, with respect to a particular security, (a) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (b) furnishes bona fide competitive bid and offer quotations on request; and (c) is ready, willing, and able to effect transaction in reasonable quantities at his or her quoted prices with other brokers or dealers.

(17) The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant.

(18) The term "mutual savings bank" means a mutual savings bank organized and operating under Title 32 RCW.

(19) Except as provided in RCW 32.32.435, the term "offer", "offer to sell", or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(20) The term "officer", for purposes of the purchase of stock in a conversion under this chapter or the sale of this stock, means the chairman of the board, president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(21) Except as provided in RCW 32.32.435, the term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(22) The term "proxy" includes every form of authorization by which a person is or may be deemed to be designated to act for a stockholder in the

exercise of his or her voting rights in the affairs of an institution. Such an authorization may take the form of failure to dissent or object.

(23) The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(24) The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but these terms do not include an exchange of securities in connection with a merger or acquisition approved by the director.

(25) The term "savings account" means deposits established in a mutual savings bank and includes certificates of deposit.

(26) Except as provided in RCW 32.32.435, the term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing.

(27) The term "series of preferred stock" refers to a subdivision, within a class of preferred stock, each share of which has preferences, limitations, and relative rights identical with those of other shares of the same series.

(28) The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to: (a) Eligible account holders as required by RCW 32.32.045; (b) supplemental eligible account holders as required by RCW 32.32.055; (c) directors, officers, and employees, as permitted by RCW 32.32.140; and (d) eligible account holders and supplemental eligible account holders as permitted by RCW 32.32.145.

(29) A "subsidiary" of a specified person is an affiliate controlled by the person, directly or indirectly through one or more intermediaries.

(30) The term "supplemental eligibility record date" means the supplemental record date for determining supplemental eligible account holders of a converting savings bank required by RCW 32.32.055. The date shall be the last day of the calendar quarter preceding director approval of the application for conversion.

(31) The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors, and their associates, as of the supplemental eligibility record date.

(32) The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which that person is the underwriter.

Terms defined in other chapters of this title, when used in this chapter, shall have the meanings given in those definitions, to the extent those definitions are not inconsistent with the definitions contained in this chapter unless the context otherwise requires.

EXPLANATORY NOTE

RCW 32.32.025 was amended twice by the 1994 legislature. Chapter 92 s 352 made technical corrections, and chapter 256 s 105 made technical corrections and revised regulation of financial institutions and securities. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 8. RCW 35.23.051 and 1994 c 223 s 17 and 1994 c 81 s 36 are each reenacted to read as follows:

General municipal elections in second class cities not operating under the commission form of government shall be held biennially in the odd-numbered years and shall be subject to general election law.

The terms of office of the mayor, city attorney, clerk, and treasurer shall be four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170: PROVIDED, That if the offices of city attorney, clerk, and treasurer are made appointive, the city attorney, clerk, and treasurer shall not be appointed for a definite term: PROVIDED FURTHER, That the term of the elected treasurer shall not commence in the same biennium in which the term of the mayor commences, nor in which the terms of the city attorney and clerk commence if they are elected.

Council positions shall be numbered in each second class city so that council position seven has a two-year term of office and council positions one through six shall each have four-year terms of office. Each councilmember shall remain in office until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170.

In its discretion the council of a second class city may divide the city by ordinance, into a convenient number of wards, not exceeding six, fix the boundaries of the wards, and change the ward boundaries from time to time and as provided in RCW 29.70.100. No change in the boundaries of any ward shall be made within one hundred twenty days next before the date of a general municipal election, nor within twenty months after the wards have been established or altered. However, if a boundary change results in one ward being represented by more councilmembers than the number to which it is entitled, those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of determining whether those positions are vacant.

Whenever such city is so divided into wards, the city council shall designate by ordinance the number of councilmembers to be elected from each ward, apportioning the same in proportion to the population of the wards. Thereafter the councilmembers so designated shall be elected by the voters resident in such

ward, or by general vote of the whole city as may be designated in such ordinance. Council position seven shall not be associated with a ward and the person elected to that position may reside anywhere in the city and voters throughout the city may vote at a primary to nominate candidates for position seven, when a primary is necessary, and at a general election to elect the person to council position seven. 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 councilmember from the ward for which he or she was elected shall create a vacancy in such office.

Wards shall be redrawn as provided in chapter 29.70 RCW. Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward associated with the council positions. If a city had so limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so. The elections for the remaining council position or council positions that are not associated with a ward shall be conducted as if the wards did not exist.

EXPLANATORY NOTE

RCW 35.23.051 was amended twice and recodified by the 1994 legislature. Chapter 81 s 36 recodified RCW 35.24.050 and revised classifications of cities and towns, and chapter 223 s 17 revised local government election practices. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 9. RCW 35.23.101 and 1994 c 223 s 19 and 1994 c 81 s 38 are each reenacted to read as follows:

The council of a second class city may declare a council position vacant if the councilmember is absent for three consecutive regular meetings without permission of the council. In addition, a vacancy in an elective office shall occur and shall be filled as provided in chapter 42.12 RCW.

Vacancies in offices other than that of mayor or city councilmember shall be filled by appointment of the mayor.

If there is a temporary vacancy in an appointive office due to illness, absence from the city or other temporary inability to act, the mayor may appoint a temporary appointee to exercise the duties of the office until the temporary disability of the incumbent is removed.

EXPLANATORY NOTE

RCW 35.23.101 was amended twice and recodified by the 1994 legislature. Chapter 81 s 38 recodified RCW 35.24.100 and revised

classifications of cities and towns, and chapter 223 s 19 revised local government election practices. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 10. RCW 35.23.850 and 1994 c 223 s 16 and 1994 c 81 s 34 are each reenacted to read as follows:

In any city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the city council may divide the city into wards, not exceeding six in all, or change the boundaries of existing wards at any time less than one hundred twenty days before a municipal general election. No change in the boundaries of wards shall affect the term of any councilmember, and councilmembers shall serve out their terms in the wards of their residences at the time of their elections. However, if these boundary changes result in one ward being represented by more councilmembers than the number to which it is entitled, those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of determining whether those positions are vacant.

The representation of each ward in the city council shall be in proportion to the population as nearly as is practicable.

Wards shall be redrawn as provided in chapter 29.70 RCW. Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward associated with the council positions. If a city had so limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so. The elections for the remaining council position or council positions that are not associated with a ward shall be conducted as if the wards did not exist.

EXPLANATORY NOTE

RCW 35.23.850 was amended twice and recodified by the 1994 legislature. Chapter 81 s 34 recodified RCW 35.23.530 and revised classifications of cities and towns, and chapter 223 s 16 revised local government election practices. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 11. RCW 35A.06.020 and 1994 c 223 s 27 and 1994 c 81 s 68 are each reenacted to read as follows:

The classifications of municipalities which existed prior to the time this title goes into effect—first class cities, second class cities, unclassified cities, and towns—and the restrictions, limitations, duties, and obligations specifically imposed by law upon such classes of cities and towns, shall have no application to noncharter code cities, but every noncharter code city, by adopting such classification, has elected to be governed by the provisions of this title, with the powers granted hereby. However, any code city that retains its old plan of government is subject to the laws applicable to that old plan of government until the city abandons its old plan of government and reorganizes and adopts a plan of government under chapter 35A.12 or 35A.13 RCW.

EXPLANATORY NOTE

RCW 35A.06.020 was amended twice by the 1994 legislature. Chapter 81 s 68 revised classifications of cities and towns, and chapter 223 s 27 revised local government election practices. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 12. RCW 36.21.011 and 1994 c 301 s 6 and 1994 c 124 s 1 are each reenacted to read as follows:

Any assessor who deems it necessary in order to complete the listing and the valuation of the property of the county within the time prescribed by law, (1) may appoint one or more well qualified persons to act as assistants or deputies who shall not engage in the private practice of appraising within the county in which he or she is employed without the written permission of the assessor filed with the auditor; and each such assistant or deputy so appointed shall, under the direction of the assessor, after taking the required oath, perform all the duties enjoined upon, vested in or imposed upon assessors, and (2) may contract with any persons, firms or corporations, who are expert appraisers, to assist in the valuation of property.

To assist each assessor in obtaining adequate and well qualified assistants or deputies, the state department of personnel, after consultation with the Washington state association of county assessors, the Washington state association of counties, and the department of revenue, shall establish by July 1, 1967, and shall thereafter maintain, a classification and salary plan for those employees of an assessor who act as appraisers. The plan shall recommend the salary range and employment qualifications for each position encompassed by it, and shall, to the fullest extent practicable, conform to the classification plan, salary schedules and employment qualifications for state employees performing similar appraisal functions.

An assessor who intends to put such plan into effect shall inform the department of revenue and the county legislative authority of this intent in writing. The department of revenue and the county legislative authority may thereupon each designate a representative, and such representative or representatives as may be designated by the department of revenue or the county legislative authority, or both, shall form with the assessor a committee. The committee so

formed may, by unanimous vote only, determine the required number of certified appraiser positions and their salaries necessary to enable the assessor to carry out the requirements relating to revaluation of property in chapter 84.41 RCW. The determination of the committee shall be certified to the county legislative authority. The committee may be formed only once in a period of four calendar years.

After such determination, the assessor may provide, in each of the four next succeeding annual budget estimates, for as many positions as are established in such determination. Each county legislative authority to which such a budget estimate is submitted shall allow sufficient funds for such positions. An employee may be appointed to a position covered by the plan only if the employee meets the employment qualifications established by the plan.

EXPLANATORY NOTE

RCW 36.21.011 was amended twice by the 1994 legislature. Chapter 124 s 1, and chapter 301 s 6 both made technical corrections. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 13. RCW 41.32.500 and 1994 c 197 s 17 and 1994 c 177 s 5 are each reenacted to read as follows:

Membership in the retirement system is terminated when a member retires for service or disability, dies, or withdraws his or her accumulated contributions.

The prior service certificate becomes void when a member dies or withdraws the accumulated contributions, and any prior administrative interpretation of the board of trustees, consistent with this section, is hereby ratified, affirmed and approved.

EXPLANATORY NOTE

RCW 41.32.500 was amended twice by the 1994 legislature. Chapter 177 s 5 related to withdrawal from the teachers' retirement system, and chapter 197 s 17 related to reentering the retirement system. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 14. RCW 84.40.080 and 1994 c 301 s 37 and 1994 c 124 s 21 are each reenacted to read as follows:

An assessor shall enter on the assessment roll in any year any property shown to have been omitted from the assessment roll of any preceding year, at the value for the preceding year, or if not then valued, at such value as the assessor shall determine for the preceding year, and such value shall be stated separately from the value of any other year. Where improvements have not been valued and assessed as a part of the real estate upon which the same may be located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property under this section. No such assessment shall be made in any case where a bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in said property prior to the time such improvements

are assessed. When such an omitted assessment is made, the taxes levied thereon may be paid within one year of the due date of the taxes for the year in which the assessment is made without penalty or interest. In the assessment of personal property, the assessor shall assess the omitted value not reported by the taxpayer as evidenced by an inspection of either the property or the books and records of said taxpayer by the assessor.

EXPLANATORY NOTE

RCW 84.40.080 was amended twice by the 1994 legislature. Chapter 124 s 21 made technical corrections, and chapter 301 s 37 revised the procedure for entering omitted property on the assessment roll. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

Sec. 15. RCW 84.48.050 and 1994 c 301 s 42 and 1994 c 124 s 31 are each reenacted to read as follows:

The county assessor shall, on or before the fifteenth day of January in each year, make out and transmit to the state auditor, in such form as may be prescribed, a complete abstract of the tax rolls of the county, showing the number of acres that have been assessed and the total value of the real property, including the structures on the real property; the total value of all taxable personal property in the county; the aggregate amount of all taxable property in the county; the total amount as equalized and the total amount of taxes levied in the county for state, county, city and other taxing district purposes, for that year. Should the assessor of any county fail to transmit to the department of revenue the abstract provided for in RCW 84.48.010, and if, by reason of such failure to transmit such abstract, any county shall fail to collect and pay to the state its due proportion of the state tax for any year, the department of revenue shall ascertain what amount of state tax said county has failed to collect, and certify the same to the state auditor, who shall charge the amount to the proper county and notify the auditor of said county of the amount of said charge; said sum shall be due and payable immediately by warrant in favor of the state on the current expense fund of said county.

EXPLANATORY NOTE

RCW 84.48.050 was amended twice by the 1994 legislature. Chapter 124 s 31 made technical corrections, and chapter 301 s 42 changed the state board of equalization to the department of revenue and made other changes in the procedure for submitting abstracts of tax rolls. The purpose of this bill is to give effect to both amendments by reenacting the section including both amendments.

NEW SECTION. **Sec. 16.** RCW 35.23.310 and 1994 c 273 s 8, 1988 c 168 s 2, & 1965 c 7 s 35.23.310 are each repealed.

EXPLANATORY NOTE

RCW 35.23.310 was both amended and repealed by the 1994 legislature. Chapter 81 s 89 repealed RCW 35.23.310, and chapter 273 s 8 amended it to provide for publication of an ordinance by its title. Chapter 273 also amended RCW 35.24.220, which was recodified as RCW 35.23.221, to provide for such publication. The purpose of this bill is to repeal RCW 35.23.310 and all related session laws.

Passed the House January 27, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 135

[House Bill 1063]

CORRECTION OF MULTIPLE AMENDMENTS AND OBSOLETE PROVISIONS

AN ACT Relating to technical corrections; correcting multiple amendments; deleting obsolete provisions; reenacting and amending RCW 29.04.160, 49.60.030, 70.94.053, 70.94.055, and 75.30.120; reenacting RCW 50.62.030; creating a new section; and repealing RCW 43.19.640, 43.19.645, 43.19.650, 43.19.655, 43.19.660, 43.19.665, and 70.94.222.

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

NEW SECTION. Sec. 1. The only intent of the legislature in this act is to correct multiple amendments and delete obsolete provisions. It is not the intent of the legislature to change the substance or effect of any presently effective statute.

Sec. 2. RCW 29.04.160 and 1993 c 441 s 2 and 1993 c 408 s 10 are each reenacted and amended to read as follows:

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 this data to the (~~state central committee~~) political party organization or other individual making the request, at cost, 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. 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. 3. RCW 49.60.030 and 1993 c 510 s 3 and 1993 c 69 s 1 are each reenacted and 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 disability

or the use of a trained guide dog or service dog by a disabled person 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, the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service dog by a disabled person, or 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 the person, or both, together with the cost of suit including reasonable 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) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

Sec. 4. RCW 50.62.030 and 1987 c 284 s 3 and 1987 c 171 s 2 are each reenacted to read as follows:

Job service resources shall be used to assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery. The job service program of the employment security department may undertake any program or activity for which funds are available and which furthers the goals of this chapter. These programs and activities shall include, but are not limited to:

(1) Giving older unemployed workers and the long-term unemployed the highest priority for all services made available under this section. The employment security department shall make the services provided under this chapter available to the older unemployed workers and the long-term unemployed as soon as they register under the employment assistance program;

(2) Supplementing basic employment services, with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(3) Providing employment services, such as recruitment, screening, and referral of qualified workers, to agricultural areas where these services have in the past contributed to positive economic conditions for the agricultural industry; and

(4) Providing otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment.

Sec. 5. RCW 70.94.053 and 1991 c 363 s 143, 1991 c 199 s 701, and 1991 c 125 s 1 are each reenacted and amended to read as follows:

(1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) Except as provided in RCW 70.94.262, all authorities which are presently activated authorities shall carry out the duties and exercise the powers provided in this chapter. Those activated authorities which encompass contiguous counties are declared to be and directed to function as a multicounty authority.

(3) ~~((Except as provided in RCW 70.94.232,))~~ All other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such ~~((appointees and/or members of county legislative authorities or other officers))~~ individuals as is provided in RCW 70.94.100.

Sec. 6. RCW 70.94.055 and 1991 c 363 s 144 and 1991 c 199 s 702 are each reenacted and amended to read as follows:

The ((county)) legislative authority of any county may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners within the county. If the county legislative authority determines as a result of the public hearing that:

- (1) Air pollution exists or is likely to occur; and
- (2) The city or town ordinances, or county resolutions, or their enforcement, are inadequate to prevent or control air pollution,

it may by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority.

Sec. 7. RCW 75.30.120 and 1993 c 340 s 32 and 1993 c 100 s 1 are each reenacted and amended to read as follows:

(1) 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 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.

(2) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(3) Subject to the restrictions in ((section 11 of this act)) RCW 75.28.011, commercial salmon fishery licenses and salmon delivery licenses are transferable from one license holder to another.

NEW SECTION. **Sec. 8.** The following acts or parts of acts are each repealed:

- (1) RCW 43.19.640 and 1979 c 151 s 105 & 1977 ex.s. c 86 s 1;
- (2) RCW 43.19.645 and 1977 ex.s. c 86 s 2;
- (3) RCW 43.19.650 and 1986 c 158 s 11 & 1977 ex.s. c 86 s 3;
- (4) RCW 43.19.655 and 1977 ex.s. c 86 s 4;
- (5) RCW 43.19.660 and 1987 c 505 s 27, 1986 c 158 s 12, 1979 c 151 s 106, & 1977 ex.s. c 86 s 5;
- (6) RCW 43.19.665 and 1977 ex.s. c 86 s 6; and
- (7) RCW 70.94.222 and 1970 ex.s. c 62 s 59, 1970 ex.s. c 41 s 2, 1969 ex.s. c 168 s 26, & 1967 c 238 s 36.

Passed the House February 3, 1995.
 Passed the Senate April 10, 1995.
 Approved by the Governor April 27, 1995.
 Filed in Office of Secretary of State April 27, 1995.

CHAPTER 136

[House Bill 1087]

MOTOR VEHICLES VIOLATIONS—CORRECTION OF UNCONSTITUTIONAL PROVISION

AN ACT Relating to correcting an unconstitutional provision about jurisdiction for violations dealing with motor vehicles; and amending RCW 46.08.190.

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

Sec. 1. RCW 46.08.190 and 1984 c 258 s 136 are each amended to read as follows:

Every district and municipal court judge shall have concurrent jurisdiction with superior court judges of the state for all violations of the provisions of this title, except the trial of felony charges on the merits, and may impose any punishment provided therefor.

Passed the House February 17, 1995.
 Passed the Senate April 10, 1995.
 Approved by the Governor April 27, 1995.
 Filed in Office of Secretary of State April 27, 1995.

CHAPTER 137

[House Bill 1112]

USE OF FUNDS BY DEPARTMENT OF GENERAL ADMINISTRATION—CLARIFICATION

AN ACT Relating to clarifying and streamlining use of funds within the department of general administration; and amending RCW 4.92.220, 39.32.010, 39.32.020, 39.32.035, and 39.32.040.

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

Sec. 1. RCW 4.92.220 and 1991 sp.s. c 13 s 91 are each amended to read as follows:

(1) A risk management account is hereby created in the treasury to be (~~an~~ appropriated account) used exclusively for the payment of costs related to:

(a) The appropriated administration of liability, property, and vehicle claims, including investigation, claim processing, negotiation, and settlement, and other expenses relating to settlements and judgments against the state not otherwise budgeted; and

(b) The nonappropriated pass-through cost associated with the purchase of liability and property insurance, including catastrophic insurance, subject to policy conditions and limitations determined by the risk manager.

(2) The risk management (~~account~~) account's appropriation shall be financed through a combination of direct appropriations and assessments to state agencies.

Sec. 2. RCW 39.32.010 and 1977 ex.s. c 135 s 1 are each amended to read as follows:

For the purposes of RCW 39.32.010 through 39.32.060:

The term "eligible donee" means any public agency carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; or nonprofit educational or public health institutions or organizations, such as medical institutions, hospitals, clinics, health centers, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, child care centers, radio and television stations licensed by the federal communications commission as educational radio or educational television stations, museums attended by the public, and public libraries serving all residents of a community, district, state, or region, and which are exempt from taxation under Section 501 of the Internal Revenue Code of 1954, for purposes of education or public health, including research for any such purpose.

The term "public agency" means the state or any subdivision thereof, including any unit of local government, economic development district, emergency services organization, or any instrumentality created by compact or other agreement between the state and a political subdivision, or any Indian tribe, band, group, or community located on a state reservation.

The term "surplus property" means any property, title to which is in the federal, state, or local government or any department or agency thereof, and which property is to be disposed of as surplus under any act of congress or the legislature or local statute, heretofore or hereafter enacted providing for such disposition.

Sec. 3. RCW 39.32.020 and 1977 ex.s. c 135 s 2 are each amended to read as follows:

The director of general administration is hereby authorized to purchase, lease or otherwise acquire from (~~the~~) federal, state, or local government (~~of the United States~~) or any surplus property disposal agency thereof surplus property to be used in accordance with the provisions of this chapter.

Sec. 4. RCW 39.32.035 and 1977 ex.s. c 135 s 3 are each amended to read as follows:

The surplus property purchase revolving fund shall be administered by the director of general administration and be used for the purchase, lease or other acquisition from time to time of surplus property from any federal, state, or local government surplus property disposal agency. The director may purchase, lease or acquire such surplus property on the requisition of an eligible donee and without such requisition at such time or times as he deems it advantageous to do

so; and in either case he shall be responsible for the care and custody of the property purchased so long as it remains in his possession.

Sec. 5. RCW 39.32.040 and 1977 ex.s. c 135 s 4 are each amended to read as follows:

In purchasing federal surplus property on requisition for any eligible donee the director may advance the purchase price thereof from the surplus property purchase revolving fund, and he shall then in due course bill the proper eligible donee for the amount paid by him for the property plus a reasonable amount to cover the expense incurred by him in connection with the transaction. In purchasing surplus property without requisition, the director shall be deemed to take title outright and he shall then be authorized to resell from time to time any or all of such property to such eligible donees as desire to avail themselves of the privilege of purchasing. All moneys received in payment for surplus property from eligible donees shall be deposited by the director in the surplus property purchase revolving fund. The director shall sell federal surplus property to eligible donees at a price sufficient only to reimburse the surplus property purchase revolving fund for the cost of the property to the fund, plus a reasonable amount to cover expenses incurred in connection with the transaction. Where surplus property is transferred to an eligible donee without cost to the transferee, the director may impose a reasonable charge to cover expenses incurred in connection with the transaction. The governor, through the director of general administration, shall administer the surplus property program in the state and shall perform or supervise all those functions with respect to the program, its agencies and instrumentalities.

Passed the House March 8, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 138

[House Bill 1163]

PROPERTY USED BY NONPROFIT ORGANIZATIONS FOR CAMPING AND RECREATION—TAX EXEMPTION

AN ACT Relating to tax exemption of public-owned property used by nonprofit organizations; amending RCW 82.29A.130; and declaring an emergency.

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

Sec. 1. RCW 82.29A.130 and 1992 c 123 s 2 are each amended to read as follows:

The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: PROVIDED, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: PROVIDED, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest shall be deemed to give use or possession for a period of less

than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for disabled persons of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly.

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 7, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 139

[Substitute House Bill 1233]

COUNTY CANVASSING BOARDS

AN ACT Relating to canvassing of election returns; amending RCW 29.62.020 and 29.62.030; adding a new section to chapter 29.62 RCW; and repealing RCW 29.62.140.

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

NEW SECTION. Sec. 1. A new section is added to chapter 29.62 RCW to read as follows:

(1) The county canvassing board consists of three members, designated in writing and filed in the office of the county auditor not later than the day before the first day duties are to be undertaken by the board, as follows:

(a) The county auditor shall designate one member, who shall be the auditor or a deputy auditor;

(b) The county prosecutor shall designate one member, who shall be the prosecutor or a deputy prosecutor; and

(c) The chair of the county legislative authority shall designate one member, who shall be a member of the county legislative authority.

(2) The members designated to the county canvassing board may not include individuals who are candidates for an office to be voted upon at the primary or election to be canvassed, unless no other individuals qualify under subsection (1) of this section.

(3) The county canvassing board may, under rules adopted by the secretary of state, delegate in writing, or at a public meeting, the performance of any task assigned by law to the board. The rules shall not authorize delegation of the responsibility of certifying the returns of a primary or election, of determining the validity of challenged ballots, or of determining the validity of special ballots referred to them by the county auditor.

(4) Meetings of the county canvassing board are public meetings under chapter 42.30 RCW.

Sec. 2. RCW 29.62.020 and 1987 c 54 s 2 are each amended to read as follows:

(1) No later than the tenth day after a special election or primary and no later than the fifteenth day after a general election, the county auditor shall convene the county canvassing board to process the absentee ballots and canvass the votes cast at that primary or election. On the tenth day after a special election or a primary and on the fifteenth day after a general election, the canvassing board shall complete the canvass and certify the results. ~~((All properly and timely voted absentee ballots which have been))~~ Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a date of mailing on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, shall be included in the canvass report. ~~((Meetings of the county canvassing board are public meetings under chapter 42.30 RCW. The county canvassing board shall consist of the county auditor, the chairman of the county legislative authority, and the prosecuting attorney or designated representatives of those officials.))~~

(2) At the request of any caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house.

Sec. 3. RCW 29.62.030 and 1965 c 9 s 29.62.030 are each amended to read as follows:

If the primary or election is one at which ~~((the county auditor))~~ a member, or the officer designating a member, of the canvassing board is ~~((to be nominated or elected, canvass of the returns))~~ a candidate for an office, decisions regarding

the determination of a voter's intent with respect to a vote cast for that specific office shall be made by the other two members of the board((+)) not designated by that officer. If the two disagree, the ((returns for that office shall be canvassed by the presiding judge of the superior court of the county)) vote shall not be counted unless the number of those votes could affect the result of the primary or election, in which case the secretary of state or a designee shall make the decision on those votes. This section does not restrict participation in decisions as to the acceptance or rejection of entire ballots, unless the office in question is the only one for which the voter cast a vote.

NEW SECTION. Sec. 4. RCW 29.62.140 and 1965 c 9 s 29.62.140 are each repealed.

Passed the House March 7, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 140

[Substitute House Bill 1241]

WAIVERS OF ELECTRIC AND GAS UTILITY CONNECTION CHARGES

AN ACT Relating to waivers of electric and gas utility connection charges; amending RCW 35.41.080 and 54.24.080; and adding a new section to chapter 35.21 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, including a code city, that owns or operates an electric or gas utility may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under section 501(c)(3) of the federal internal revenue code as amended prior to the effective date of this act. Waivers of connection charges for the same class of electric or gas utility service must be uniformly applied to all qualified property. Nothing in this section authorizes the impairment of a contract.

Sec. 2. RCW 35.41.080 and 1971 ex.s. c 223 s 3 are each amended to read as follows:

(1) The legislative body of any city or town may provide by ordinance for revenues by fixing rates and charges for the furnishing of service, use, or benefits to those to whom service, use, or benefits from such facility or utility is available, which rates and charges shall be uniform for the same class of service. ~~((And;))~~ The legislative body may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under section 501(c)(3) of the federal internal revenue code as amended prior to the effective date of this act. Waivers of connection charges for the same class

of electric or gas utility service must be uniformly applied to all qualified property. Nothing in this subsection (1) authorizes the impairment of a contract.

(2) If revenue bonds or warrants are issued against the revenues ((thereof)) collected under subsection (1) of this section, the legislative body of the city or town shall fix charges at rates which will be sufficient, together with any other moneys lawfully pledged therefor, to provide for the payment of bonds and warrants, principal and interest, sinking fund requirements and expenses incidental to the issuance of such revenue bonds or warrants; in fixing such charges the legislative body of the city or town may establish rates sufficient to pay, in addition, the costs of operating and maintaining such facility or utility.

Sec. 3. RCW 54.24.080 and 1991 c 347 s 21 are each amended to read as follows:

(1) The commission of each district which shall have revenue obligations outstanding shall have the power and shall be required to establish, maintain, and collect rates or charges for electric energy and water and other services, facilities, and commodities sold, furnished, or supplied by the district (~~which~~). The rates and charges shall be fair and, except as authorized by RCW 74.38.070 and by subsections (2) and (3) of this section, nondiscriminatory, and shall be adequate to provide revenues sufficient for the payment of the principal of and interest on such revenue obligations for which the payment has not otherwise been provided and all payments which the district is obligated to set aside in any special fund or funds created for such purpose, and for the proper operation and maintenance of the public utility and all necessary repairs, replacements, and renewals thereof.

(2) The commission of a district may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under section 501(c)(3) of the federal internal revenue code as amended prior to the effective date of this act. Waivers of connection charges for the same class of electric or gas utility service must be uniformly applied to all qualified property. Nothing in this subsection (2) authorizes the impairment of a contract.

(3) In establishing rates or charges for water service, commissioners may in their discretion consider the achievement of water conservation goals and the discouragement of wasteful water use practices.

Passed the House February 22, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 141

[Substitute House Bill 1246]

PRIVATE SCHOOL BUS REGULATION

AN ACT Relating to the regulation of private school buses; amending RCW 46.04.521 and 46.37.193; and adding a new section to chapter 46.37 RCW.

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

Sec. 1. RCW 46.04.521 and 1965 ex.s. c 155 s 90 are each amended to read as follows:

School bus means every motor vehicle used regularly to transport children to and from school or in connection with school activities, which is subject to the requirements set forth in the most recent edition of "Specifications for School Buses" published by the state superintendent of public instruction, but does not include buses operated by common carriers in urban transportation of school children or private carrier buses operated as school buses in the transportation of children to and from private schools or school activities.

Sec. 2. RCW 46.37.193 and 1990 c 241 s 10 are each amended to read as follows:

Every school bus and private carrier bus, in addition to any other equipment or distinctive markings required by this chapter, shall bear upon the front and rear thereof, above the windows thereof, plainly visible signs containing only the words "school bus" on a school bus and only the words "private carrier bus" on a private carrier bus in letters not less than eight inches in height, and in addition shall be equipped with visual signals meeting the requirements of RCW 46.37.190.

However, a private carrier bus that regularly transports children to and from a private school or in connection with school activities may display the words "school bus" in a manner provided in this section and need not comply with the requirements set forth in the most recent edition of "Specifications for School Buses" published by the superintendent of public instruction.

NEW SECTION. Sec. 3. A new section is added to chapter 46.37 RCW to read as follows:

A private school bus is subject to the requirements set forth in the National Standards for School Buses established by the national safety council in effect at the time of the bus manufacture, as adopted by rule by reference by the chief of the Washington state patrol. A private school bus manufactured before 1980 must meet the minimum standards set forth in the 1980 edition of the National Standards for School Buses.

Passed the House March 7, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 142

[House Bill 1280]

OFFENDERS' NONCOMPLIANCE WITH SENTENCES—SANCTIONS

AN ACT Relating to offenders' noncompliance with conditions or requirements of sentences; amending RCW 9.94A.200; and prescribing penalties.

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

Sec. 1. RCW 9.94A.200 and 1989 c 252 s 7 are each amended to read as follows:

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

~~((b))~~ (c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community service obligation to total or partial confinement, ((ø#)) (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community service hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community service, or (iv) order one or more of the penalties authorized in (a)(i)

of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court; and
 ((e)) (d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community service obligations.

(3) Nothing in this section prohibits the filing of escape charges if appropriate.

Passed the House March 7, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 143

[Substitute House Bill 1287]

SILVICULTURAL BURNING AUTHORIZATION—AIR QUALITY MONITORING

AN ACT Relating to forest health and calculating emissions for silvicultural burning; and amending RCW 70.94.665.

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

Sec. 1. RCW 70.94.665 and 1991 c 199 s 403 are each amended to read as follows:

(1) The department of natural resources shall administer a program to reduce state-wide emissions from silvicultural forest burning so as to achieve the following minimum objectives:

(a) Twenty percent reduction by December 31, 1994[,] providing a ceiling for emissions until December 31, 2000; and

(b) Fifty percent reduction by December 31, 2000[,] providing a ceiling for emissions thereafter.

Reductions shall be calculated from the average annual emissions level from calendar years 1985 to 1989, using the same methodology for both reduction and base year calculations.

(2) The department of natural resources, within twelve months after May 15, 1991, shall develop a plan, based upon the existing smoke management agreement to carry out the programs as described in this section in the most efficient, cost-effective manner possible. The plan shall be developed in consultation with the department of ecology, public and private landowners engaged in silvicultural forest burning, and representatives of the public.

The plan shall recognize the variations in silvicultural forest burning including, but not limited to, a landowner's responsibility to abate an extreme fire hazard under chapter 76.04 RCW and other objectives of burning, including abating and preventing a fire hazard, geographic region, climate, elevation and slope, proximity to populated areas, and diversity of land ownership. The plan shall establish priorities that the department of natural resources shall use to allocate allowable emissions, including but not limited to, silvicultural burning

used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. The plan shall also recognize the real costs of the emissions program and recommend equitable fees to cover the costs of the program.

The emission reductions in this section are to apply to all forest lands including those owned and managed by the United States. If the United States does not participate in implementing the plan, the departments of natural resources and ecology shall use all appropriate and available methods or enforcement powers to ensure participation.

The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

(3) If the December 31, 1994, emission reductions targets in this section are not met, the department of natural resources, in consultation with the department of ecology, shall use its authority granted in this chapter and chapter 76.04 RCW to immediately limit emissions from such burning to the 1994 target levels and limit silvicultural forest burning in subsequent years to achieve equal annual incremental reductions so as to achieve the December 31, 2000, target level. If, as a result of the program established in this section, the emission reductions are met in 1994, but are not met by December 31, 2000, the department of natural resources in consultation with the department of ecology shall immediately limit silvicultural forest burning to reduce emissions from such burning to the December 31, 2000, target level in all subsequent years.

(4) Emissions from silvicultural burning in eastern Washington that is conducted for the purpose of restoring forest health or preventing the additional deterioration of forest health are exempt from the reduction targets and calculations in this section if the following conditions are met:

(a) The landowner submits a written request to the department identifying the location of the proposed burning and the nature of the forest health problem to be corrected. The request shall include a brief description of alternatives to silvicultural burning and reasons why the landowner believes the alternatives not to be appropriate.

(b) The department determines that the proposed silvicultural burning operation is being conducted to restore forest health or prevent additional deterioration to forest health; meets the requirements of the state smoke management plan to protect public health, visibility, and the environment; and will not be conducted during an air pollution episode or during periods of impaired air quality in the vicinity of the proposed burn.

(c) Upon approval of the request by the department and before burning, the landowner is encouraged to notify the public in the vicinity of the burn of the general location and approximate time of ignition.

(5) The department of ecology may conduct a limited, seasonal ambient air quality monitoring program to measure the effects of forest health burning conducted under subsection (4) of this section. The monitoring program may be developed in consultation with the department of natural resources, private and public forest landowners, academic experts in forest health issues, and the general public.

Passed the House March 8, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 144

[House Bill 1295]

RETIREMENT SYSTEM BENEFITS PAYMENT

AN ACT Relating to payment of retirement system benefits upon death of a member or retiree; amending RCW 41.40.188, 41.40.220, 41.40.250, 41.40.270, 41.40.660, 41.40.670, 41.40.700, 41.32.520, 41.32.522, 41.32.523, 41.32.530, 41.32.550, 41.32.785, 41.32.790, 41.32.805, 41.26.460, 41.26.470, 41.26.510, 2.10.144, and 2.10.146; and reenacting and amending RCW 41.40.235.

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

Sec. 1. RCW 41.40.188 and 1990 c.249 s 9 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.40.180 or retirement for disability under RCW 41.40.210 or 41.40.230, a member shall elect to have the retirement allowance paid pursuant to one of the following options calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons ((having an insurable interest in the retiree's life)), trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid

to a person (~~(who has an insurable interest in the member's life. Such person shall be)~~) nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) A member may elect to include the benefit provided under RCW 41.40.640 along with the retirement options available under this section. This retirement allowance option shall be calculated so as to be actuarially equivalent to the options offered under this subsection.

(2) A member, if married, must provide the written consent of his or her spouse to the option selected under this section. If a member is married and both the member and the member's spouse do not (~~(given [give])~~) give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section.

Sec. 2. RCW 41.40.220 and 1991 c 35 s 81 are each amended to read as follows:

Upon retirement for disability, as provided in RCW 41.40.200, a member who has not attained age sixty shall receive the following benefits, subject to the provisions of RCW 41.40.310 and 41.40.320:

(1) A disability retirement pension of two-thirds of his or her average final compensation to his or her attainment of age sixty, subject to the provisions of RCW 41.40.310. The disability retirement pension provided by the employer shall not exceed forty-two hundred dollars per annum, and

(2) Upon attainment of age sixty, the disabled member shall receive a service retirement allowance as provided in RCW 41.40.210. The department shall grant the disabled member membership service for the period of time prior to age sixty he or she was out of such service due to disability.

(3) During the period a disabled member is receiving a disability pension, as provided for in subsection (1) of this section, his or her contributions to the employees' savings fund shall be suspended and his or her balance in the employees' savings fund, standing to his or her credit as of the date his or her disability pension is to begin, shall remain in the employees' savings fund. If the disabled member should die before attaining age sixty, while a disability beneficiary, upon receipt by the department of proper proof of death, the member's accumulated contributions standing to his or her credit in the employees' savings fund, shall be paid to the member's estate, or such person or persons, (~~(having an insurable interest in his or her life,)~~) trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the accumulated contributions standing to the member's credit in the employees' savings fund shall be paid to his or her surviving spouse, or if there is no surviving spouse, then to the member's legal representative.

Sec. 3. RCW 41.40.235 and 1991 c 343 s 8 and 1991 c 35 s 83 are each reenacted and amended to read as follows:

(1) Upon retirement, a member shall receive a nonduty disability retirement allowance equal to two percent of average final compensation for each service credit year of service: PROVIDED, That this allowance shall be reduced by two percent of itself for each year or fraction thereof that his or her age is less than fifty-five years: PROVIDED FURTHER, That in no case may the allowance provided by this section exceed sixty percent of average final compensation.

(2) If the recipient of a retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons (~~having an insurable interest in his or her life~~), trust, or organization as the recipient has nominated by written designation duly executed and filed with the director or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse or, if there is neither a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

Sec. 4. RCW 41.40.250 and 1991 c 35 s 84 are each amended to read as follows:

An individual who was a member on February 25, 1972, may upon qualifying pursuant to RCW 41.40.230, make an irrevocable election to receive the nonduty disability retirement allowance provided in subsections (1) and (2) of this section subject to the provisions of RCW 41.40.310 and 41.40.320. Upon attaining or becoming disabled after age sixty the member shall receive a service retirement allowance as provided for in RCW 41.40.190 except that the annuity portion thereof shall consist of a continuation of the cash refund annuity previously provided to him or her. The disability retirement allowance prior to age sixty shall consist of:

(1) A cash refund annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of his or her retirement; and

(2) A pension, in addition to the annuity, equal to one one-hundredth of the member's average final compensation for each year of service. If the recipient of a retirement allowance under this section dies before the total of the annuity portions of the retirement allowance paid to him or her equals the amount of his or her accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons (~~having an insurable interest in his or her life~~), trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department, or if there is no designated person or persons, still living at the time of his or her death, then to his or her surviving spouse, or if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representatives.

Sec. 5. RCW 41.40.270 and 1991 c 365 s 27 are each amended to read as follows:

(1) Should a member die before the date of retirement the amount of the accumulated contributions standing to the member's credit in the employees' savings fund, 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 death:

(a) Shall be paid to the member's estate, or such person or persons, (~~having an insurable interest in the member's life,~~) trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there be no such designated person or persons still living at the time of the member's death, or if a member fails to file a new beneficiary designation subsequent to marriage, remarriage, dissolution of marriage, divorce, or reestablishment of membership following termination by withdrawal or retirement, such 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 the surviving spouse as if in fact such spouse had been nominated by written designation as aforesaid, or if there be no such surviving spouse, then to the member's legal representatives.

(2) Upon the death in service, or while on authorized leave of absence for a period not to exceed one hundred and twenty days from the date of payroll separation, of any member who is qualified but has not applied for a service retirement allowance or has completed ten years of service at the time of death, the designated beneficiary, or the surviving spouse as provided in subsection (1) of this section, may elect to waive the payment provided by subsection (1) of this section. Upon such an election, a joint and one hundred percent survivor option under RCW 41.40.188, calculated under the retirement allowance described in RCW 41.40.185 or 41.40.190, whichever is greater, 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 shall automatically be given effect as if selected for the benefit of the (~~surviving spouse or dependent who is the~~) designated beneficiary. If the member is not then qualified for a service retirement allowance, such 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.

(3) Subsection (1) of this section, unless elected, shall not apply to any member who has applied for service retirement in RCW 41.40.180, as now or hereafter amended, and thereafter dies between the date of separation from service and the member's effective retirement date, where the member has selected a survivorship option under RCW 41.40.188. In those cases the beneficiary named in the member's final application for service retirement may elect to receive either a cash refund, 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, or monthly payments according to the option selected by the member.

Sec. 6. RCW 41.40.660 and 1990 c 249 s 10 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.40.630 or retirement for disability under RCW 41.40.670, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons (~~((having an insurable interest in the retiree's life))~~), trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person (~~((who has an insurable interest in the member's life. Such person shall be))~~) nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2) A member, if married, must provide the written consent of his or her spouse to the option selected under this section. If a member is married and both the member and the member's spouse do not (~~((given {give}))~~) give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section.

Sec. 7. RCW 41.40.670 and 1991 c 35 s 99 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.40.610 through 41.40.740. The member shall receive a monthly disability allowance computed as provided for in RCW 41.40.620 and shall have this allowance actuarially reduced to reflect the

difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the department, shall be considered a retirement under subsection (1) of this section.

(3)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons ((~~having an insurable interest in his or her life~~)), trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

Sec. 8. RCW 41.40.700 and 1993 c 236 s 5 are each amended to read as follows:

(1) Except as provided in RCW 11.07.010, 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 the member's estate, or such person or persons ((~~having an insurable interest in such member's life~~)), trust, or organization 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~~) estate, trust, or organization 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. 9. RCW 41.32.520 and 1993 c 16 s 1 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, trust, or organization 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.

Sec. 10. RCW 41.32.522 and 1992 c 212 s 4 are each amended to read as follows:

(1) The department shall pay a death benefit of six hundred dollars to a member's estate or to the persons, trust, or organization the member nominates by written designation duly executed and filed with the department or to the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520 upon receipt of proper proof of death of the member if he or she:

(a) Was employed on a full time basis during the fiscal year in which his or her death occurs;

(b) Was under contract for full time employment in a Washington public school;

(c) Submits an application for a retirement allowance to be approved by the department immediately following termination of his or her full-time Washington public school service and who dies before the first installment of his or her retirement allowance becomes due;

(d) Is receiving or is entitled to receive temporary disability payments; or

(e) Upon becoming eligible for a disability retirement allowance submits an application for an allowance to be approved by the department immediately following the date of his or her eligibility for a disability retirement allowance and dies before the first installment of such allowance becomes due.

(2) In order to receive a death benefit under this section a deceased member:

(a) Must have established at least one year of credit with the retirement system for full time Washington membership service;

(b) Who was not employed full time in Washington public school service during the fiscal year immediately preceding the year of his or her death must have been employed full time in Washington public school service for at least fifty consecutive days during the fiscal year of his or her death.

Sec. 11. RCW 41.32.523 and 1992 c 212 s 5 are each amended to read as follows:

Upon receipt of proper proof of death of a member who does not qualify for the death benefit of six hundred dollars under RCW 41.32.522, or a former member who was retired for age, service, or disability, a death benefit of four hundred dollars shall be paid to the member's estate or to the persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department or to the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520: PROVIDED, That the

member or the retired former member had established not less than ten years of credit with the retirement system for full time Washington membership service.

Sec. 12. RCW 41.32.530 and 1990 c 249 s 5 are each amended to read as follows:

(1) Upon an application for retirement for service under RCW 41.32.480 or retirement for disability under RCW 41.32.550, approved by the department, every member shall receive the maximum retirement allowance available to him or her throughout life unless prior to the time the first installment thereof becomes due he or she has elected, by executing the proper application therefor, to receive the actuarial equivalent of his or her retirement allowance in reduced payments throughout his or her life with the following options:

(a) Standard allowance. If he or she dies before he or she has received the present value of his or her accumulated contributions at the time of his or her retirement in annuity payments, the unpaid balance shall be paid to his or her estate or to such person, trust, or organization as he or she shall have nominated by written designation executed and filed with the department.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person who has an insurable interest in the member's life. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) Such other benefits shall be paid to a member receiving a retirement allowance under RCW 41.32.497 as the member may designate for himself, herself, or others equal to the actuarial value of his or her retirement annuity at the time of his retirement: **PROVIDED**, That the board of trustees shall limit withdrawals of accumulated contributions to such sums as will not reduce the member's retirement allowance below one hundred and twenty dollars per month.

(d) A member whose retirement allowance is calculated under RCW 41.32.498 may also elect to receive a retirement allowance based on options available under this subsection that includes the benefit provided under RCW 41.32.770. This retirement allowance option shall also be calculated so as to be actuarially equivalent to the maximum retirement allowance and to the options available under this subsection.

(2) A member, if married, must provide the written consent of his or her spouse to the option selected under this section. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section.

Sec. 13. RCW 41.32.550 and 1991 sp.s. c 11 s 6 are each amended to read as follows:

(1) Should the director determine from the report of the medical director that a member employed under an annual contract with an employer has become permanently disabled for the performance of his or her duties or at any time while a member is receiving temporary disability benefits that a member's disability will be permanent, a member shall have the option of then receiving (a) all of the accumulated contributions in a lump sum payment and canceling his or her membership, or (b) of accepting a retirement allowance based on service or age, if eligible under RCW 41.32.480, or (c) if the member had five or more years of Washington membership service credit established with the retirement system, a retirement allowance because of disability.

(2) Any member applying for a retirement allowance who is eligible for benefits on the basis of service or age shall receive a retirement allowance based on the provision of law governing retirement for service or age. If the member qualifies to receive a retirement allowance because of disability he or she shall be paid the maximum annuity which shall be the actuarial equivalent of the accumulated contributions at his or her age of retirement and a pension equal to the service pension to which he or she would be entitled under RCW 41.32.497. If the member dies before he or she has received in annuity payments the present value of the accumulated contributions at the time of retirement, the unpaid balance shall be paid to the estate or to the persons, trust, or organization nominated by written designation executed and filed with the department.

(3) A member retired for disability may be required at any time to submit to reexamination. If medical findings reveal that the individual is no longer disabled for the performance of public school service, the retirement allowance granted because of disability may be terminated by action of the director or upon written request of the member. In case of termination, the individual shall be restored to full membership in the retirement system.

Sec. 14. RCW 41.32.785 and 1990 c 249 s 6 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.32.765 or retirement for disability under RCW 41.32.790, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons ((having an insurable interest in the retiree's life)), trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving

spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person (~~((who has an insurable interest in the member's life))~~). Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2) A member, if married, must provide the written consent of his or her spouse to the option selected under this section. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section.

Sec. 15. RCW 41.32.790 and 1991 c 35 s 68 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.32.755 through 41.32.825. The member shall receive a monthly disability allowance computed as provided for in RCW 41.32.760 and shall have the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons (~~((having an insurable interest in his or her life))~~), trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

Sec. 16. RCW 41.32.805 and 1993 c 236 s 4 are each amended to read as follows:

(1) Except as provided in RCW 11.07.010, 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 the member's estate, or such person or persons ((having an insurable interest in such member's life)), trust, or organization 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 an estate, a person or persons, (~~having an insurable interest in the member's life,~~) trust, or organization 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. 17. RCW 41.26.460 and 1990 c 249 s 3 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.26.430 or disability retirement under RCW 41.26.470, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance: A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons (~~having an insurable interest in the retiree's life,~~) trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person (~~who has an insurable interest in the member's life,~~). Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2) A member, if married, must provide the written consent of his or her spouse to the option selected under this section. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent

survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section.

Sec. 18. RCW 41.26.470 and 1993 c 517 s 4 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-five.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.26.450.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons (~~(having an insurable interest in his or her life)~~), trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

Sec. 19. RCW 41.26.510 and 1993 c 236 s 3 are each amended to read as follows:

(1) Except as provided in RCW 11.07.010, 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 the member's estate, or such person or persons (~~(having an insurable interest in such member's life)~~), trust, or organization 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 an estate, a person or persons, (~~having an insurable interest in the member's life,~~) trust, or organization 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. 20. RCW 2.10.144 and 1990 c 249 s 13 are each amended to read as follows:

(1) If a judge dies before the date of retirement, the amount of the accumulated contributions standing to the judge's credit at the time of death shall be paid to the member's estate, or such person or persons, (~~having an insurable interest in the judge's life,~~) trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems. If there is no such designated person or persons still living at the time of the judge's death, or if the judge fails to file a new beneficiary designation subsequent to marriage, remarriage, dissolution of marriage, divorce, or reestablishment of membership following termination by withdrawal or retirement, the judge's credited accumulated contributions shall be paid to the surviving spouse as if in fact the spouse had been nominated by written

designation or, if there is no such surviving spouse, then to the judge's legal representatives.

(2) Upon the death in service of any judge who is qualified but has not applied for a service retirement allowance or has completed ten years of service at the time of death, the designated beneficiary, or the surviving spouse as provided in subsection (1) of this section, may elect to waive the payment provided by subsection (1) of this section. Upon such an election, a joint and one hundred percent survivor option under RCW 2.10.146 shall automatically be given effect as if selected for the benefit of the surviving spouse or dependent who is the designated beneficiary, except that if the judge is not then qualified for a service retirement allowance, the option II benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased judge would have first qualified for a service retirement allowance. However, subsection (1) of this section, unless elected, shall not apply to any judge who has applied for a service retirement and thereafter dies between the date of separation from service and the judge's effective retirement date, where the judge has selected a survivorship option under RCW 2.10.146(1)(b). In those cases, the beneficiary named in the judge's final application for service retirement may elect to receive either a cash refund or monthly payments according to the option selected by the judge.

Sec. 21. RCW 2.10.146 and 1990 c 249 s 2 are each amended to read as follows:

(1) Upon making application for a service retirement allowance under RCW 2.10.100 or a disability allowance under RCW 2.10.120, a judge who is eligible therefor shall make an election as to the manner in which such service retirement shall be paid from among the following designated options, calculated so as to be actuarially equivalent to each other:

(a) Standard allowance. A member selecting this option shall receive a retirement allowance, which shall be computed as provided in RCW 2.10.110. The retirement allowance shall be payable throughout the judge's life. However, if the judge dies before the total of the retirement allowance paid to the judge equals the amount of the judge's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons ((having an insurable interest in the judge's life)), trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems or, if there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse or, if there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(b) The department shall adopt rules that allow a judge to select a retirement option that pays the judge a reduced retirement allowance and upon death, such portion of the judge's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated

person (~~(who has an insurable interest in the judge's life)~~). Such person shall be nominated by the judge by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2) A judge, if married, must provide the written consent of his or her spouse to the option selected under this section. If a judge is married and both the judge and the judge's spouse do not give written consent to an option under this section, the department will pay the judge a joint and fifty percent survivor benefit and record the judge's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section.

Passed the House March 8, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 145

[House Bill 1297]

STATE RETIREMENT SYSTEM BENEFITS—COMPLIANCE WITH FEDERAL LIMITS ON MAXIMUM COMPENSATION

AN ACT Relating to complying with federal limits on the maximum compensation used to calculate state retirement system benefits; adding a new section to chapter 41.26 RCW; adding a new section to chapter 41.32 RCW; adding a new section to chapter 41.40 RCW; 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 41.26 RCW under the subchapter heading "provisions applicable to plan I and plan II" to read as follows:

(1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section.

NEW SECTION. Sec. 2. A new section is added to chapter 41.32 RCW under the subchapter heading "provisions applicable to plan I and plan II" to read as follows:

(1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section.

NEW SECTION. Sec. 3. A new section is added to chapter 41.40 RCW under the subchapter heading "provisions applicable to plan I and plan II" to read as follows:

(1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section.

NEW SECTION. Sec. 4. A new section is added to chapter 43.43 RCW to read as follows:

(1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section.

Passed the House March 8, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 146

[House Bill 1343]

PORT DISTRICTS—ELIMINATION OF REQUIREMENT TO FILE TARIFFS WITH THE UTILITIES AND TRANSPORTATION COMMISSION

AN ACT Relating to eliminating the requirement of port districts to file tariffs with the utilities and transportation commission; and amending RCW 53.08.070.

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

Sec. 1. RCW 53.08.070 and 1955 c 65 s 8 are each amended to read as follows:

A district may fix, without right of appeal therefrom the rates of wharfage, dockage, warehousing, and port and terminal charges upon all improvements owned and operated by it, and the charges of ferries operated by it. ~~((The port commission shall file with the utilities and transportation commission its schedule of rates and charges so fixed, as required of public service corporations. It may change any rate and charge so filed by filing with the commission a notice of the proposed change not less than thirty days before the change shall go into effect.))~~

It may fix, subject to state regulation, rates of wharfage, dockage, warehousing, and all necessary port and terminal charges upon all docks, wharves, warehouses, quays, and piers owned by it and operated under lease from it.

Notwithstanding any provision of this section, a port district may enter into any contract for wharfage, dockage, warehousing, or port or terminal charges, with the United States or any governmental agency thereof or with the state of Washington or any political subdivision thereof under such terms as the commission may, in its discretion, negotiate.

Passed the House March 8, 1995.
 Passed the Senate April 10, 1995.
 Approved by the Governor April 27, 1995.
 Filed in Office of Secretary of State April 27, 1995.

CHAPTER 147

[Substitute House Bill 1404]

SEAFOOD SAFETY ENHANCEMENT

AN ACT Relating to seafood safety enhancement; amending RCW 69.30.010, 69.30.030, 69.30.050, 69.30.110, 69.30.120, and 69.30.140; adding a new section to chapter 43.70 RCW; and prescribing penalties.

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

Sec. 1. RCW 69.30.010 and 1991 c 3 s 303 are each amended to read as follows:

When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, ~~((and))~~ clams, and scallops, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

(6) "Department" means the state department of health.

(7) "Secretary" means the secretary of health or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen ~~((horse clams))~~ horse clams; (d) six geoducks; ~~((or))~~ (e) fifty pounds of hard or soft shell clams; or (f) fifty pounds of scallops. The poundage in this subsection (8) constitutes weight with the shell.

(9) "Fish and wildlife enforcement officer" means a fisheries patrol officer or an ex officio fisheries patrol officer as defined in RCW 75.08.011 (4) and (5) or a wildlife agent or an ex officio wildlife agent as defined in RCW 77.08.010 (5) and (6).

Sec. 2. RCW 69.30.030 and 1955 c 144 s 3 are each amended to read as follows:

The state board of health shall cause such investigations to be made as are necessary to determine reasonable requirements governing the sanitation of shellfish, shellfish growing areas, and shellfish plant facilities and operations, in order to protect public health and carry out the provisions of this chapter; and shall adopt such requirements as rules and regulations of the state board of health. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish ~~((and))~~, the identification of containers, and the handling, maintenance, and storage of permits, certificates, and records regarding shellfish taken under this chapter.

Sec. 3. RCW 69.30.050 and 1985 c 51 s 2 are each amended to read as follows:

Shellfish growing areas, from which shellfish are removed in a commercial quantity or for sale for human consumption shall ~~((be in a safe and sanitary condition, meeting))~~ meet the requirements of this chapter and the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to remove shellfish in a commercial quantity or for sale for human consumption from a growing area in the state of Washington shall first apply to the department for a certificate of approval of the growing area. The department shall cause the shellfish growing area to be inspected and if the area meets the ~~((sanitary))~~ requirements of this chapter and the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the ~~((sanitary))~~ requirements of this chapter and the state board of health.

Shellfish growing areas from which shellfish are removed in a commercial quantity for purposes other than human consumption including but not limited to bait or seed, shall be readily subject to monitoring and inspections, and shall otherwise be of a character ensuring that shellfish harvested from such areas are not diverted for use as food. A certificate of approval issued by the department for shellfish growing areas from which shellfish are to be removed for purposes other than human consumption shall specify the date or dates and time of harvest and all applicable conditions of harvest, identification by tagging, dying, or other means, transportation, processing, sale, and other factors to ensure that shellfish harvested from such areas are not diverted for use as food.

Sec. 4. RCW 69.30.110 and 1985 c 51 s 4 are each amended to read as follows:

It is unlawful for any person to possess a commercial quantity of shellfish or to sell or offer to sell ~~((for human consumption))~~ shellfish in the state which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter. Failure of a shellfish grower to display immediately a certificate of approval issued under RCW 69.30.050 to an authorized representative of the department, a ~~((fisheries patrol officer, or an ex officio fisheries patrol officer))~~ fish and wildlife enforcement officer, or an ex officio fish and wildlife enforcement officer subjects the grower to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Failure of a shellfish processor to display a certificate of approval issued under RCW 69.30.060 to an authorized representative of the department, a ~~((fisheries patrol))~~ fish and wildlife enforcement officer, or an ex officio ((fisheries patrol)) fish and wildlife enforcement officer subjects the processor to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Shellfish seized under this section shall be subject to prompt disposal by the representative or officer and may not be used for human consumption. The state board of health shall develop by rule procedures for the disposal of the seized shellfish.

Sec. 5. RCW 69.30.120 and 1985 c 51 s 5 are each amended to read as follows:

The department may enter and inspect any shellfish growing area or establishment for the purposes of determining compliance with this chapter and rules adopted under this chapter. The department may inspect all shellfish, all permits, all certificates of approval and all ~~((shellfish, and take for inspection such samples of shellfish as may reasonably be necessary to carry out the provisions of this chapter))~~ records.

During such inspections the department shall have free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities, vehicles, and other places reasonably considered to be or to have been part of the regulated business or entity, to all ledgers, books, accounts, memorandums, or records required to be compiled or maintained under this chapter or under rules adopted pursuant to this chapter, and to any products, components, or other materials reasonably believed to be or to have been used, processed, or produced by or in connection with the regulated business or activity. In connection with such inspections the department may take such samples or specimens as may be reasonably necessary to determine whether there exists a violation of this chapter or rules adopted under this chapter.

Inspection of establishments may be conducted between eight a.m. and five p.m. on any weekday that is not a legal holiday, during any time the regulated business or entity has established as its usual business hours, at any time the regulated business or entity is open for business or is otherwise in operation, and

at any other time with the consent of the owner or authorized agent of the regulated business or entity.

The department may apply for an administrative inspection warrant to a court of competent jurisdiction and an administrative inspection warrant may issue where:

(1) The department has attempted an inspection under this chapter and access to all or part of the regulated business or entity has been actually or constructively denied; or

(2) There is reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

~~((For purposes of this chapter, fisheries patrol officers or ex officio fisheries patrol officers are limited to entry, inspection, and destruction of shellfish to achieve compliance with RCW 69.30.110 and to taking for inspection samples of shellfish as may reasonably be necessary to carry out this chapter.))~~

Sec. 6. RCW 69.30.140 and 1985 c 51 s 6 are each amended to read as follows:

Any person (~~found~~) convicted of violating any of the provisions of this chapter shall be guilty of a gross misdemeanor~~(, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one thousand dollars, or imprisonment in the county jail of the county in which the offense was committed for not less than thirty days nor more than one year, or to both fine and imprisonment)).~~ A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a violation conviction for purposes of license forfeiture under RCW 75.10.120.

NEW SECTION. Sec. 7. A new section is added to chapter 43.70 RCW to read as follows:

(1) The department may enter and inspect any property, lands, or waters, of this state in or on which any marine species are located or from which such species are harvested, whether recreationally or for sale or barter, and any land or water of this state which may cause or contribute to the pollution of areas in or on which such species are harvested or processed. The department may take any reasonably necessary samples to determine whether such species or any lot, batch, or quantity of such species is safe for human consumption.

(2) If the department determines that any species or any lot, batch, or other quantity of such species is unsafe for human consumption because consumption is likely to cause actual harm or because consumption presents a potential risk of substantial harm, the department may, by order under chapter 34.05 RCW, prohibit or restrict the commercial or recreational harvest or landing of any marine species except the recreational harvest of shellfish as defined in chapter 69.30 RCW if taken from privately owned tidelands.

(3) It is unlawful to harvest any marine species in violation of a departmental order prohibiting or restricting such harvest under this section or to possess or sell any marine species so harvested.

(4) Any person who sells any marine species taken in violation of this section is subject to the penalties provided in RCW 69.30.140 and 69.30.150. Any person who harvests or possesses marine species taken in violation of this section is guilty of a civil infraction and is subject to the penalties provided in RCW 69.30.150. Notwithstanding this section, any person who harvests, possesses, sells, offers to sell, culls, shucks, or packs shellfish is subject to the penalty provisions of chapter 69.30 RCW. Charges shall not be brought against a person under both chapter 69.30 RCW and this section in connection with this same action, incident, or event.

(5) The criminal provisions of this section are subject to enforcement by fish and wildlife enforcement officers or ex officio fish and wildlife enforcement patrol officers as defined in RCW 75.08.011.

(6) As used in this section, marine species include all fish, invertebrate or plant species which are found during any portion of the life cycle of those species in the marine environment.

Passed the House March 8, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 148

[House Bill 1407]

MARITIME COMMISSION—OIL SPILL RESPONSE

AN ACT Relating to the maritime commission; amending RCW 88.46.060; creating new sections; repealing RCW 88.44.155 and 88.44.215; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature finds that there is a need to continue to provide oil spill response and contingency plan coverage for vessels that do not have their own contingency plans that transit the waters of this state. A nonprofit corporation shall be established for the sole purpose of providing oil spill response and contingency plan coverage in compliance with RCW 88.46.060.

(2) The maritime commission may conduct activities and make expenditures necessary for the transition of services presently provided by the commission and its contractors to the nonprofit corporation established pursuant to this section.

(3) Once the nonprofit corporation is established and the transfers under section 2 of this act are completed, the maritime commission may cease operation.

NEW SECTION. Sec. 2. All reports, documents, surveys, books, records, files, papers, written materials, tangible property, and assets, including contracts and assessment moneys held by the maritime commission shall be transferred to the nonprofit corporation created under section 1 of this act. Funds transferred under this section shall be used for the sole purpose of providing oil spill response and contingency plan coverage and related activities in compliance with RCW 88.46.060. No funds may be transferred under this section until all liabilities of the maritime commission have been provided for or satisfied. All liabilities not provided for or satisfied by the maritime commission before cessation of its operations shall be transferred to the nonprofit corporation at the time the maritime commission's assets are transferred to the corporation.

Sec. 3. RCW 88.46.060 and 1992 c 73 s 20 are each amended to read as follows:

(1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, natural resources, and public and private property from such spills. The office shall by rule adopt and periodically revise standards for the preparation of contingency plans. The office shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the office, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, (~~fisheries;~~) fish and wildlife, and natural resources, and the office of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. If the office has adopted rules for contingency plans prior to July 1, 1992, the description of archaeologically sensitive areas shall only be required when the office revises the rules for contingency plans after

July 1, 1992. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the repositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(o) If the department of ecology has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The owner or operator of a tank vessel of three thousand gross tons or more shall submit a contingency plan to the office within six months after the office adopts rules establishing standards for contingency plans under subsection (1) of this section.

(b) Contingency plans for all other covered vessels shall be submitted to the office within eighteen months after the office has adopted rules under subsection (1) of this section. The office may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or ~~((the Washington state maritime commission under RCW 88.44.020))~~ a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the office, the owner

or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by ~~((the Washington state maritime commission pursuant to RCW 88.44.020))~~ a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the office, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the office, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the office may be accepted by the office as a contingency plan under this section. The office shall assure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the office shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The office shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the office shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the office determines should be included.

(8) An owner or operator of a covered vessel shall notify the office in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the office. The office may require the owner or operator to update a contingency plan as a result of these changes.

(9) The office by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the office at least once every five years.

(10) Approval of a contingency plan by the office does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

NEW SECTION. Sec. 4. The following acts or parts of acts are each repealed:

(1) RCW 88.44.155 and 1994 c 52 s 4; and

(2) RCW 88.44.215 and 1994 c 52 s 3.

NEW SECTION. Sec. 5. Section 4 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, 1995.

NEW SECTION. Sec. 6. Sections 1 through 3 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 March 1, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 149

[House Bill 1450]

SUMMARIES OF JUDGMENTS—JUDGMENTS INCLUDED

AN ACT Relating to summaries of judgments; and amending RCW 4.64.030.

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

Sec. 1. RCW 4.64.030 and 1994 c 185 s 2 are each amended to read as follows:

The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

On the first page of each judgment which provides for the payment of money, including judgments in rem, mandates of judgments, and judgments on garnishments, the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees, if known at the time of the entry of the judgment. If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. This information is included in the judgment to assist the county clerk in his or her record-keeping function. The clerk may not sign or file a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. The clerk is not liable for an incorrect summary.

Passed the House February 22, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 150

[House Bill 1468]

ADVISORY COUNCIL ON HISTORIC PRESERVATION MEMBERSHIP

AN ACT Relating to the advisory council on historic preservation; and reenacting and amending RCW 27.34.250.

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

Sec. 1. RCW 27.34.250 and 1993 c 185 s 1 and 1993 c 101 s 12 are each reenacted and 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, to each serve on the council for one year on a rotating basis, the order of rotation to be~~

~~determined by the governor))~~ A representative of a local or state heritage organization;

(h) 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) 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.

Passed the House February 22, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 151

[Substitute House Bill 1483]

FOREST WILD FIRE PREVENTION AND SUPPRESSION

AN ACT Relating to the prevention and suppression of forest wild fires; amending RCW 76.04.165; 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:

(1) The legislature hereby finds and declares that forest wild fires are a threat to public health and safety and can cause catastrophic damage to public and private resources, including clean air, clean water, fish and wildlife habitat, timber resources, forest soils, scenic beauty, recreational opportunities, structures, and other improvements; and that it is in the public interest to protect forests and forest resources by preventing and suppressing forest wild fires.

(2) The legislature hereby finds and declares that it is in the public interest to establish and maintain a complete, cooperative, and coordinated forest fire protection and suppression program for the state; that, second only to saving lives, the primary mission of the department is protecting forest resources and suppressing forest wild fires; that a primary mission of rural fire districts and municipal fire departments is protecting improved property and suppressing structural fires; and that the most effective way to protect structures is for the

department to focus its efforts and resources on aggressively suppressing forest wild fires.

(3) The legislature also acknowledges the natural role of fire in forest ecosystems, and finds and declares it in the public interest to use fire under controlled conditions to prevent wild fires by maintaining healthy forests and eliminating sources of fuel.

Sec. 2. RCW 76.04.165 and 1988 c 273 s 2 are each amended to read as follows:

(1) The legislature finds and declares that forest lands within the state are increasingly being used for residential purposes; that the risk to life and property is increasing from forest fires which may destroy developed property; ~~((that the department's primary mission is to protect forest land and suppress forest fires; that a primary mission of the rural fire districts and municipal fire departments is to protect improved property and suppress structural fires;))~~ that, based on the primary missions for the respective fire control agencies established in this chapter, adjustment of the geographic areas of responsibility ~~((for the respective fire control agencies))~~ has not kept pace with the increasing use of forest lands for residential purposes; and that the department should work with the state's other fire control agencies to define geographic areas of responsibility that are more consistent with their respective primary missions.

(2) To accomplish the purposes of subsection (1) of this section, the department shall establish a procedure to clarify its geographic areas of responsibility. The areas of department protection shall be called forest protection zones. The forest protection zones shall include all forest land which the department is obligated to protect but shall not include forest land within rural fire districts or municipal fire districts which affected local fire control agencies agree, by mutual consent with the department, is not appropriate for department protection. Forest land not included within a forest protection zone established by mutual agreement of the department and a rural fire district or a municipal fire district shall not be assessed under RCW 76.04.610 or 76.04.630.

(3) After the department and any affected local fire protection agencies have agreed on the boundary of a forest protection zone, the department shall establish the boundary by rule under chapter 34.05 RCW.

(4) Except by agreement of the affected parties, the establishment of forest protection zones shall not alter any mutual aid agreement.

Passed the House March 9, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 152

[House Bill 1501]

INSURANCE EXAMINATION EXPENSES—CORRECTION OF DOUBLE AMENDMENTS

AN ACT Relating to correcting double amendments related to insurance examination expenses; reenacting RCW 48.03.060; and creating a new section.

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

NEW SECTION. Sec. 1. The only intent of the legislature in this act is to correct double amendments. It is not the intent of the legislature to change the substance or effect of any statute previously enacted.

Sec. 2. RCW 48.03.060 and 1993 c 462 s 47 and 1993 c 281 s 55 are each reenacted 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 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 the commissioner 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) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.

(4) 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 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 the commissioner.

The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory

action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action.

Passed the House March 8, 1995.
 Passed the Senate April 10, 1995.
 Approved by the Governor April 27, 1995.
 Filed in Office of Secretary of State April 27, 1995.

CHAPTER 153

[House Bill 1866]

AERONAUTICS—SEARCH AND RESCUE—DETERMINATION OF HAZARDS

AN ACT Relating to aeronautics; amending RCW 47.68.340; adding a new section to chapter 47.68 RCW; and repealing RCW 47.68.370.

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

NEW SECTION. Sec. 1. A new section is added to chapter 47.68 RCW to read as follows:

The aviation division is responsible for the conduct and management of all aerial search and rescue within the state. This includes search and rescue efforts involving aircraft and airships. The division is also responsible for search and rescue activities involving electronic emergency signaling devices such as emergency locator transmitters (ELT's) and emergency position indicating radio beacons (EPIRB's).

Sec. 2. RCW 47.68.340 and 1984 c 7 s 361 are each amended to read as follows:

A structure or obstacle that obstructs the air space above ground or water level, when determined by the department after a hearing to be a hazard or potential hazard to the safe flight of aircraft, shall be plainly marked, illuminated, painted, lighted, or designated in a manner to be approved in accordance with the general rules of the department so that the structure or obstacle will be clearly visible to airmen. In determining which structures or obstacles constitute (~~or may become~~) a safety hazard, or a hazard to (~~air~~) flight, the department shall take into account (~~only~~) those obstacles located at a river, lake, (~~and~~) or canyon crossing(~~s~~), and in other low-altitude flight paths usually traveled by aircraft including, but not limited to, airport areas and runway departure and approach areas as defined by federal air regulations.

NEW SECTION. Sec. 3. RCW 47.68.370 and 1984 c 7 s 363 & 1975-'76 2nd ex.s. c 73 s 1 are each repealed.

Passed the House March 9, 1995.
 Passed the Senate April 12, 1995.
 Approved by the Governor April 27, 1995.
 Filed in Office of Secretary of State April 27, 1995.

CHAPTER 154

[Substitute House Bill 1929]

JAIL INDUSTRIES

AN ACT Relating to jail industries; amending RCW 36.110.020, 36.110.120, and 36.110.130; adding new sections to chapter 36.110 RCW; and repealing RCW 36.110.040.

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

Sec. 1. RCW 36.110.020 and 1993 c 285 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) "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 employer model industries" means ~~((types of industries which produce products, goods, or services through two modalities: (a) Employer model))~~ an agreement between a 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)))~~ utilizing jail inmates whose compensation and supervision are provided by the private sector business or entity.

"Free venture customer model~~((+ An industry operated and managed))~~ industries" means an agreement between a city or county and a private sector business or industry, or nonprofit organization to provide Washington state manufacturers or businesses with products or services currently produced, provided, ((and)) or assembled by out-of-state or foreign suppliers utilizing jail inmates whose compensation and supervision are provided by the incarcerating facility or local jurisdiction.

(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.

(8) "Tax reduction industries" means those industries as designated by a city or county owning and operating such an industry to provide work training and employment opportunities for jail inmates, in total confinement, which reduce public support costs. The goods and services of these industries may be sold to

public agencies, nonprofit organizations, and private contractors when the goods purchased will be ultimately used by a public agency or nonprofit organization. Surplus goods from these operations may be donated to government and nonprofit organizations.

Sec. 2. RCW 36.110.120 and 1993 c 285 s 12 are each amended to read as follows:

(1) A jail inmate who works in a free venture industry or a tax reduction 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, as provided in this section. ((However:))

(2) For jail inmates participating in free venture employer model industries, the private sector business or industry or the nonprofit organization that is party to the agreement, shall provide industrial insurance coverage under Title 51 RCW. Local jurisdictions shall not be responsible for obligations under Title 51 RCW in a free venture employer model industry except as provided in RCW 36.110.130.

(3) For jail inmates participating in free venture customer model industries, the incarcerating entity or jurisdiction, the private sector business or industry, or the nonprofit organization that is party to the agreement, shall provide industrial insurance coverage under Title 51 RCW dependent upon how the parties to the agreement choose to finalize the agreement.

(4) For jail inmates incarcerated and participating in tax reduction industries:

(a) Local jurisdictions that are self-insured may elect to provide medical aid benefits coverage only under chapter 51.36 RCW through the state fund.

(b) Local jurisdictions, to include self-insured jurisdictions, may elect to provide industrial insurance coverage under Title 51 RCW through the state fund.

(5) If industrial insurance coverage under Title 51 RCW is provided for inmates under this section, 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 not employed in a ((nonfree)) free venture industry or a tax reduction industry.

Sec. 3. RCW 36.110.130 and 1993 c 285 s 13 are each amended to read as follows:

In the event of a failure ((or discontinuance)) such as a bankruptcy or dissolution, of a private sector business, industry, or nonprofit organization engaged in 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)) the free venture industry agreement, as if the city or county had been the employing agency. To ensure that this obligation can be clearly identified

and accomplished, and to provide accountability for purposes of the department of labor and industries, a free venture jail industry agreement entered into by a city or county and private sector business, industry, or nonprofit organization should be filed under a separate master business application, establishing a new and separate account with the department of labor and industries, and not be reported under an existing account for parties to the agreement.

NEW SECTION. Sec. 4. A new section is added to chapter 36.110 RCW to read as follows:

Technical training assistance shall be provided to local jurisdictions by the board at the jurisdiction's request. To facilitate and promote the development of local jail industries programs, this training and technical assistance may include the following: (1) Delivery of state-wide jail industry implementation workshops for administrators of jail industries programs; (2) development of recruitment and education programs for local business and labor to gain their participation; (3) ongoing staff assistance regarding local jail industries issues, such as sound business management skills, development of a professional business plan, responding to questions regarding risk management, industrial insurance, and similar matters; and (4) provision of guidelines and assistance for the coordination of basic educational programs and jail industries as well as other technical skills required by local jails in the implementation of safe, productive, and effective jail industries programs.

NEW SECTION. Sec. 5. A new section is added to chapter 36.110 RCW to read as follows:

Any member serving in their official capacity on the Washington state jail industries board, in either an appointed or advisory capacity, or either their employer or employers, or other entity that selected the members to serve, are immune from a civil action based upon an act performed in good faith.

NEW SECTION. Sec. 6. RCW 36.110.040 and 1993 c 285 s 4 are each repealed.

Passed the House March 8, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 155

[Substitute House Bill 2060]

BUDGET DOCUMENTS

AN ACT Relating to the budget document offered by the governor to the legislature; and amending RCW 43.88.020.

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

Sec. I. RCW 43.88.020 and 1994 c 184 s 9 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, either written or provided on any electronic media or both, 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 verification" means an analysis that (a) verifies the accuracy of data used by state agencies in quantifying intended results and measuring performance toward those results, and (b) verifies whether or not the reported results were achieved.

(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.

Passed the House March 10, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 156

[Senate Bill 5039]

LURING OF PERSONS WITH DEVELOPMENTAL DISABILITIES

AN ACT Relating to luring; and amending RCW 9A.40.090.

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

Sec. 1. RCW 9A.40.090 and 1993 c 509 s 1 are each amended to read as follows:

A person commits the crime of luring if the person:

(1)(a) Orders, lures, or attempts to lure a minor or ~~((developmentally disabled person))~~ a person with a developmental disability into ~~((a))~~ any area or structure that is obscured from or inaccessible to the public or into a motor vehicle;

(b) Does not have the consent of the minor's parent or guardian or the ~~((the developmentally disabled person's guardian))~~ of the guardian of the person with a developmental disability; and

(c) Is unknown to the child or developmentally disabled person.

(2) It is a defense to luring, which the defendant must prove by a preponderance of the evidence, that the defendant's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the minor or ~~((developmentally disabled person))~~ the person with the developmental disability.

(3) For purposes of this section:

(a) "Minor" means a person under the age of sixteen;

(b) ~~"((Developmentally disabled person))~~ Person with a developmental disability" means a person with a developmental disability as defined in RCW 71A.10.020.

(4) Luring is a class C felony.

Passed the Senate April 17, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 157

[Senate Bill 5060]

PUBLICATION OF LEGAL NOTICES BY POLITICAL SUBDIVISIONS

AN ACT Relating to publication of legal notices by political subdivisions; and amending RCW 65.16.160.

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

Sec. 1. RCW 65.16.160 and 1994 c 273 s 19 are each amended to read as follows:

(1) Whenever any county~~((city, or town))~~ is required by law to publish legal notices containing the full text of any proposed or adopted ordinance in a newspaper, the county~~((city, or town))~~ may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

(a) The name of the county~~((city, or town))~~;

(b) The formal identification or citation number of the ordinance;

(c) A descriptive title;

(d) A section-by-section summary;

(e) Any other information which the county~~((city, or town))~~ finds is necessary to provide a complete summary; and

(f) A statement that the full text will be mailed upon request.

Publication of the title of an ordinance by a ~~((city or town))~~ county authorizing the issuance of bonds, notes, or other evidences of indebtedness shall

constitute publication of a complete summary of that ordinance, and a section-by-section summary shall not be required.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains provisions regarding taxation or penalties or contains legal descriptions of real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering more than one street address, the street addresses of the four corners of the area described shall meet this requirement.

(3) The full text of any ordinance which is summarized by publication under this section shall be mailed without charge to any person who requests the text from the adopting county(~~(city, or town)~~).

Passed the Senate February 8, 1995.

Passed the House April 12, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 158

[Senate Bill 5267]

WRITE-IN CANDIDATES—FILING FEES AND TABULATION PROCEDURES

AN ACT Relating to write-in candidates; amending RCW 29.04.180 and 29.51.170; and recodifying RCW 29.51.170.

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

Sec. 1. RCW 29.04.180 and 1990 c 59 s 100 are each amended to read as follows:

Any person who desires to be a write-in candidate and have such votes counted at a primary or election may, if the jurisdiction of the office sought is entirely within one county, file a declaration of candidacy with the county auditor not later than the day before the primary or election. If the jurisdiction of the office sought encompasses more than one county the declaration of candidacy shall be filed with the secretary of state not later than the day before the primary or election. Declarations of candidacy for write-in candidates must be accompanied by a filing fee in the same manner as required of other candidates filing for the office as provided in RCW 29.15.050.

Votes cast for write-in candidates who have filed such declarations of candidacy and write-in votes for persons appointed by political parties pursuant to RCW 29.18.160 need only specify the name of the candidate in the appropriate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number or political party, if applicable.

No person may file as a write-in candidate where:

(1) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(2) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election, unless one or the other of the two filings is for the office of precinct committeeperson;

(3) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless one of the two offices for which he or she is a candidate is precinct committeeperson.

The declaration of candidacy shall be similar to that required by RCW 29.15.010. No write-in candidate filing under RCW 29.04.180 may be included in any voter's pamphlet produced under chapter 29.80 RCW unless that candidate qualifies to have his or her name printed on the general election ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29.81A RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets.

Sec. 2. RCW 29.51.170 and 1988 c 181 s 5 are each amended to read as follows:

For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29.04.180 and such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29.04.180 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office, position, or political party shall be accepted if the canvassing board can determine, to their satisfaction, the voter's intent.

Write-in votes cast for an office need not be tallied if, assuming all of these write-in votes were cast for the same person, the write-in votes could not have altered the outcome of the primary or election.

NEW SECTION. Sec. 3. RCW 29.51.170 shall be recodified as a section in chapter 29.62 RCW.

Passed the Senate April 17, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 159

[Senate Bill 5378]

BORDER AREAS—DISBURSEMENT OF FUNDS

AN ACT Relating to disbursement of funds to border areas; amending RCW 66.08.190, 66.08.195, and 43.63A.190; adding new sections to chapter 66.08 RCW; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 66.08.190 and 1991 sp.s. c 32 s 34 are each amended to read as follows:

When excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(1) Three-tenths of one percent to ~~((the department of community development to be allocated to))~~ border areas under RCW 66.08.195; and

(2) From the amount remaining after distribution under subsection (1) of this section, fifty percent to the general fund of the state, ten percent to the counties of the state, and forty percent to the incorporated cities and towns of the state.

~~((3))~~ The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340.

Sec. 2. RCW 66.08.195 and 1988 c 229 s 3 are each amended to read as follows:

For the purposes of this ~~((section, the term))~~ chapter: (1) "Border area" means ~~((Blaine, Everson, Friday Harbor, Lynden, Nooksack, Northport, Oroville, Port Angeles, Sumas, and that area of Whatcom county commonly referred to as Point Roberts:~~

~~Funds allocable to border areas under RCW 66.08.190 shall be distributed pursuant to a formula developed by the department of community development, by rule, based on border traffic and historical public impacts of law enforcement problems caused by the border on local budgets. All such funds received by Whatcom county pursuant to this allocation shall be spent within the Point Roberts area))~~ any incorporated city or town located within seven miles of the Washington-Canadian border or any unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border.

(2) "Border area per-capita law-enforcement spending" equals total per capita expenditures in a border area on: Law enforcement operating costs, court costs, law enforcement-related insurance, and detention expenses, minus funds allocated to a border area under RCW 66.08.190 and section 3 of this act.

(3) "Border-crossing traffic total" means the number of vehicles, vessels, and aircraft crossing into the United States through a United States customs service border crossing that enter into the border area during a federal fiscal year, using border crossing statistics and criteria included in guidelines adopted by the department of community, trade, and economic development.

(4) "Border-related crime statistic" means the sum of infractions and citations issued, and arrests of persons permanently residing outside Washington state in a border area during a calendar year.

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

Distribution of funds to border areas under RCW 66.08.190 shall be as follows:

(1) Sixty-five percent of the funds shall be distributed to border areas ratably based on border area traffic totals;

(2) Twenty-five percent of the funds shall be distributed to border areas ratably based on border-related crime statistics; and

(3) Ten percent of the funds shall be distributed to border areas ratably based upon border area per capita law enforcement spending.

Distributions to an unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border shall be made to the county in which such an area is located and may only be spent on services provided to that area.

NEW SECTION. Sec. 4. A new section is added to chapter 66.08 RCW to read as follows:

The department of community, trade, and economic development shall develop guidelines to determine the figures used under the three distribution factors defined in RCW 66.08.195. At the request of any border community, the department may review these guidelines once every three years.

Sec. 5. RCW 43.63A.190 and 1984 c 125 s 11 are each amended to read as follows:

Funds appropriated by the legislature as supplemental resources for border areas shall be distributed by the state treasurer pursuant to ((a)) the formula ~~((developed by the department under chapter 34.05 RCW based on border traffic and historical public impacts of law enforcement problems caused by the border on local budgets. All funds received by Whatcom county under this section shall be spent within the Point Roberts area.~~

~~As used in this section, "border area" means any incorporated city or town located within seven miles of the Washington-Canadian border and any point of land surrounded on three sides by water and adjacent to the Canadian border))~~ for distributing funds from the liquor revolving fund to border areas, and expenditure requirements for such distributions, under section 3 of this act.

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, 1995.

Passed the Senate April 17, 1995.
Passed the House April 4, 1995.
Approved by the Governor April 27, 1995.
Filed in Office of Secretary of State April 27, 1995.

CHAPTER 160

[Substitute Senate Bill 5402]

INDUSTRIAL INSURANCE PENALTIES—PROVISIONS MODIFIED—ANNUAL REPORT ON FRAUD

AN ACT Relating to industrial insurance penalties; amending RCW 51.16.200, 51.32.020, 51.32.040, 51.48.020, 51.48.120, and 51.48.150; adding a new section to chapter 43.22 RCW; prescribing penalties; and creating a new section.

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

Sec. 1. RCW 51.16.200 and 1986 c 9 s 6 are each amended to read as follows:

Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any tax payable hereunder shall become immediately due and payable, and the employer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the employer until such time as the employer shall produce a receipt from the department showing payment in full of any tax due or a certificate that no tax is due and, if such tax is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any tax due from the person from whom ~~((that person))~~ the successor has acquired a business or stock of goods if ~~((that person))~~ the successor gives written notice to the department of such acquisition and no assessment is issued by the department within ~~((sixty))~~ one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor.

Sec. 2. RCW 51.32.020 and 1977 ex.s. c 350 s 39 are each amended to read as follows:

If injury or death results to a worker from the deliberate intention of the worker himself or herself to produce such injury or death, or while the worker is engaged in the attempt to commit, or the commission of, a felony, neither the worker nor the widow, widower, child, or dependent of the worker shall receive any payment under this title.

If injury or death results to a worker from the deliberate intention of a beneficiary of that worker to produce the injury or death, or if injury or death results to a worker as a consequence of a beneficiary of that worker engaging in the attempt to commit, or the commission of, a felony, the beneficiary shall not receive any payment under this title.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased worker and, at the same time, as the stepchild of a deceased worker.

Sec. 3. RCW 51.32.040 and 1987 c 75 s 7 are each amended to read as follows:

(1) Except as provided in RCW 43.20B.720 and 74.20A.260, no money paid or payable under this title shall, ~~((except as provided for in RCW 43.20B.720 or 74.20A.260, prior to))~~ before the issuance and delivery of the check or warrant ~~((therefor))~~, be ~~((capable of being))~~ assigned, charged, or ~~((ever be))~~ taken in execution ~~((or))~~, attached ~~((or))~~, garnished, ~~((nor shall the same))~~ or pass~~((r))~~ or be paid~~((r))~~ to any other person by operation of law, ~~((or by))~~ any form of voluntary assignment, or power of attorney. Any such assignment or charge ~~((shall be))~~ is void~~((r))~~ unless the transfer is to a financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045 ~~((shall be made: PROVIDED, That))~~.

(2)(a) If any worker suffers (i) a permanent partial injury~~((r))~~ and dies from some other cause than the accident which produced ~~((such))~~ the injury before he or she ~~((shall have received))~~ receives payment of ~~((his or her))~~ the award for ~~((such))~~ the permanent partial injury~~((r))~~ or ~~((if any worker suffers))~~ (ii) any other injury before he or she ~~((shall have received))~~ receives payment of any monthly installment covering any period of time ~~((prior to))~~ before his or her death, the amount of ~~((such))~~ the permanent partial disability award~~((r))~~ or ~~((of such))~~ the monthly payment, or both, shall be paid to the surviving spouse~~((r))~~ or ~~((to))~~ the child or children if there is no surviving spouse~~((: PROVIDED FURTHER, That))~~.

(b) If any worker suffers an injury and dies ~~((therefrom))~~ from it before he or she ~~((shall have received))~~ receives payment of any monthly installment covering time loss for any period of time ~~((prior to))~~ before his or her death, the amount of ~~((such))~~ the monthly payment shall be paid to the surviving spouse~~((r))~~ or ~~((to))~~ the child or children if there is no surviving spouse~~((: PROVIDED FURTHER, That))~~.

(c) Any application for compensation under ~~((the foregoing provisos of this section))~~ this subsection (2) shall be filed with the department or self-insuring employer within one year of the date of death~~((: PROVIDED FURTHER, That))~~. However, if the injured worker resided in the United States as long as three years ~~((prior to))~~ before the date of injury, ~~((such))~~ payment under this subsection (2) shall not be made to any surviving spouse or child who was at the

time of the injury a nonresident of the United States(~~(- PROVIDED FURTHER, That))~~).

(3)(a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible ((therefor)) for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of ((such)) the compensation canceled during the period of confinement ((but)). After discharge from the institution, payment of benefits ((thereafter)) due afterward shall be paid if ((such)) the worker or beneficiary would, ((but)) except for the provisions of this ((proviso)) subsection (3), otherwise be entitled ((thereto: PROVIDED FURTHER, That)) to them.

(b) If any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she ((shall be)) is entitled to payments under this title, subject to the requirements of chapter 72.65 RCW, unless his or her participation in ((such)) the program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence(~~(- PROVIDED FURTHER, That))~~).

(c) If ((such incarcerated)) the confined worker has any beneficiaries during ((such)) the confinement period during which benefits are canceled under (a) or (b) of this subsection, ((any beneficiaries,)) they shall be paid directly the monthly benefits which would have been paid to ((him or her)) the worker for himself or herself and ((his or her)) the worker's beneficiaries had ((he or she)) the worker not been ((so)) confined.

(4) Any lump sum benefits to which ((the)) a worker would otherwise be entitled but for the provisions of ((these provisos)) this section shall be paid on a monthly basis to his or her beneficiaries.

Sec. 4. RCW 51.48.020 and 1987 c 221 s 1 are each amended to read as follows:

(1) Any employer, who misrepresents to the department the amount of his or her payroll or employee hours upon which the premium under this title is based, shall be liable to the state in ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department. If such misrepresentations are made knowingly, an employer shall also be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.

(2) Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.

Sec. 5. RCW 51.48.120 and 1986 c 9 s 10 are each amended to read as follows:

If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by certified mail to the employer's last known address(~~(~~accompanied by an affidavit of service by mailing,~~)~~) or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries.

Sec. 6. RCW 51.48.150 and 1987 c 442 s 1119 are each amended to read as follows:

The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the

director's duly authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

NEW SECTION. Sec. 7. A new section is added to chapter 43.22 RCW to read as follows:

The department shall annually compile a comprehensive report on workers' compensation fraud in Washington. The report shall include the department's activities related to the prevention, detection, and prosecution of worker, employer, and provider fraud and the cost of such activities, as well as the actual and estimated cost savings of such activities. The report shall be submitted to the appropriate committees of the legislature prior to the start of the legislative session in January.

NEW SECTION. Sec. 8. Sections 2 and 3 of this act shall apply from the effective date of this act without regard to the date of injury or the date of filing a claim.

Passed the Senate April 17, 1995.

Passed the House April 6, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 161

[Substitute Senate Bill 5780]

VIATICAL SETTLEMENTS—REGULATION

AN ACT Relating to the regulation of viatical settlements; adding a new section to chapter 42.17 RCW; adding a new chapter to Title 48 RCW; and prescribing penalties.

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) "Person" means the same as defined in RCW 48.01.070.

(2) "Viatical settlement broker" means an individual, partnership, corporation, or other entity who or which for another person, and for a fee, commission, or any other valuable consideration, does any of the following things:

(a) Offers or advertises the availability of viatical settlements;

(b) Introduces viators to viatical settlement providers;

(c) Offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. However, "viatical settlement broker" does not mean an attorney, accountant, or financial planner retained to represent the viator, whose fee or other compensation is not paid by the viatical settlement provider.

(3) "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a viator.

(4) "Viatical settlement provider" means any person that enters into an agreement with a viator under the terms of which the viatical settlement provider pays compensation or anything of value, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate of insurance to the viatical settlement provider. "Viatical settlement provider" does not mean the following:

(a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan; or

(b) The issuer of a life insurance policy providing accelerated benefits, as those are defined in WAC 284-23-620(1).

(5) "Viator" means the owner of a life insurance policy, or the holder of a certificate of insurance, insuring the life of a person with a catastrophic or life-threatening illness or condition, who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate of insurance, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate of insurance to the viatical settlement provider.

NEW SECTION. Sec. 2. (1) On or after the effective date of this act, an individual, partnership, corporation, or other entity may not act as a viatical settlement provider or enter into or solicit a viatical settlement contract in this state, or act as a viatical settlement broker, without first obtaining a license from the commissioner.

(2) Application for a license for a viatical settlement provider or viatical settlement broker shall be made on a form prescribed by the commissioner, and the application shall be accompanied by a fee as determined by the commissioner by rule.

(3) Licenses for viatical settlement providers or viatical settlement brokers may be renewed from year to year on the anniversary date or at another interval established by rule, upon payment of the renewal fee and submission of forms

of information as determined by rule. Failure to pay the fee within the time prescribed shall result in automatic revocation of the license.

(4) The applicant shall provide the information the commissioner requires on forms prescribed by the commissioner.

(a) The applicant shall disclose the identity of all stockholders, partners, and corporate officers; its parent entities and affiliates, and their stockholders, partners, and officers; to the extent prescribed by the commissioner.

(b) The commissioner may refuse to issue or renew a license if he or she is not satisfied that any officer, partner, stockholder, or employee thereof, who may materially influence the conduct of the applicant or licensee, meets the standards required by the public interest.

(c) A license issued to a partnership, corporation, or other entity authorizes all its partners, officers, and employees to act as viatical settlement providers under the license, if they were identified in the application or application for renewal.

(d) Any person who willfully misrepresents any fact required to be disclosed in an application for a license to act as either a viatical settlement provider or a viatical settlement broker shall be liable to penalties as provided by applicable law.

(5) Upon the filing of an application and the payment of the fee required by rule, the commissioner shall issue or renew a license if the commissioner finds that the applicant:

(a) Has provided a detailed and adequate plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the business covered by the license for which the applicant has applied;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business covered by the license for which the applicant has applied; and

(d) If a corporation, is incorporated under the laws of this state, or is a foreign corporation authorized to transact business in this state.

(6) The commissioner shall not issue or renew any license unless the applicant has filed with the commissioner a written irrevocable consent that any action against the applicant may be commenced by the service of process upon the commissioner.

NEW SECTION. Sec. 3. (1) The commissioner may suspend, revoke, or refuse to renew the license of any viatical settlement broker or viatical settlement provider if the commissioner finds that:

(a) There was any misrepresentation, intentional or otherwise, in the application for the license or for renewal of a license;

(b) The applicant for, or holder of any such license, is or has been subject to a final administrative action for being, or is otherwise shown to be, untrustworthy or incompetent to act as either a viatical settlement broker or a viatical settlement provider;

(c) The applicant for, or holder of any such license, demonstrates a pattern of unreasonable payments to viators;

(d) The applicant for, or holder of any such license, has been convicted of a felony or of any criminal misdemeanor of which criminal fraud is an element; or

(e) The applicant for, or holder of any such license, has violated any provision of this title.

(2) The commissioner may from time to time require the holder of any license issued under this chapter to supply current information on the identity or capacity of stockholders, partners, officers, and employees, including but not limited to the following: Fingerprints, personal history, business experience, business records, and any other information which the commissioner may require.

(3) Before the commissioner suspends or revokes any license issued under this chapter, or refuses to issue any such license, the commissioner shall conduct a hearing, if the applicant or licensee requests this in writing. The hearing shall be in accordance with chapters 34.05 and 48.04 RCW.

(4) After a hearing or with the consent of any party licensed under this chapter and in addition to or in lieu of the suspension, revocation, or refusal to renew any license under this chapter, the commissioner may levy a fine upon the viatical settlement provider in an amount not more than ten thousand dollars, for each violation of this chapter. The order levying the fine shall specify the period within which the fine shall be fully paid, and that period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay the fine when due, the commissioner may revoke the license if not already revoked, and the fine may be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be deposited into the general fund.

NEW SECTION. Sec. 4. After a date established by rule, no viatical settlement provider or viatical settlement broker may use any viatical settlement contract or brokerage contract in this state unless the contract form has been filed with and approved by the commissioner. Any such contract filing is approved if it has not been disapproved within sixty days after it is filed with the commissioner. The rate, fee, commission, or other compensation charged must also be filed with the commissioner at the same time the contract form is filed, and any changes must be filed and approved before use. The commissioner shall disapprove any such viatical settlement contract or brokerage contract, or revoke previous approval, or rates, if the commissioner makes either of the following alternative findings:

(1) The benefits offered to the viator are unreasonable in relation to the rate, fee, or other compensation that is charged; or

(2) Any other provisions or terms of the contract are unreasonable, contrary to the public interest, misleading, or unfair to the viator.

NEW SECTION. Sec. 5. Each holder of any license issued under this chapter shall file with the commissioner, on or before March 1 of each year, an annual statement containing such information as the commissioner may by rule require.

NEW SECTION. Sec. 6. (1) The commissioner may examine the business and affairs of any applicant for or holder of any license issued under this chapter. The commissioner may require any applicant for or holder of any such license to produce any records, books, files, and any other writings or information reasonably necessary to determine whether or not the applicant for or holder of any such license is acting, or has acted, in violation of any laws, or otherwise contrary to the interests of the public, or has acted in a manner demonstrating incompetence or untrustworthiness to hold any such license. The expenses incurred in conducting any examination shall be paid by the applicant for or holder of any such license.

(2) The names and individual identification data of all viators are private and confidential information and shall not be disclosed by the commissioner, except under court order.

(3) Records of all transactions of viatical settlement contracts and brokerage contracts, and an advertising file containing the text of all advertising used and the dates and media in which it was used, shall be maintained by each holder of any license issued under this chapter.

NEW SECTION. Sec. 7. A viatical settlement provider shall disclose, in writing, the following information to the viator no later than the date when the viatical settlement contract is signed by all parties:

(1) Possible alternatives to viatical settlement contracts for persons with catastrophic or life-threatening conditions. These shall include, but not be limited to, any available accelerated benefits on the life insurance policy;

(2) The fact that some or all of the proceeds of the viatical settlement may be taxable, and that advice and assistance should be sought from an attorney or tax professional;

(3) The fact that the proceeds of the viatical settlement could be subject to the claims of creditors, and that advice and assistance should be sought from an attorney;

(4) The fact that receiving the proceeds of the viatical settlement might adversely affect the viator's eligibility for medicaid, or other public benefits or entitlements, and that advice and assistance should be sought from an attorney;

(5) The right of the viator to rescind the contract on or before the later of (a) thirty days after the date when it is executed by all parties or (b) fifteen days after the receipt of the proceeds of the viatical settlement contract; and

(6) The date by which the proceeds will be available to the viator, and also the source of the proceeds.

NEW SECTION. Sec. 8. (1) A viatical settlement provider entering into a viatical settlement contract with a viator shall first obtain the following:

(a) A written and signed statement from an attending medical doctor that in his or her professional opinion, the viator is of sound mind and under no undue influence;

(b) A document witnessed by a person not employed by or affiliated with the viatical settlement provider, in which the viator consents to the viatical settlement contract, acknowledges the catastrophic or life-threatening illness or condition, and represents that he or she:

(i) Has a complete understanding of the viatical settlement contract;

(ii) Has a full and complete understanding of the life insurance policy;

(iii) Releases his or her medical records for the limited and express purpose of making the viatical settlement agreement possible;

(iv) Has either obtained advice or assistance from an attorney or tax professional, or has had the opportunity to do so; and

(v) Has entered into the viatical settlement contract freely and voluntarily; and

(c) In those cases where the viator is not the insured person, a written consent to the viatical settlement agreement from the insured person or his or her legal representative.

(2) All medical information solicited or obtained by any holder of a license issued under this chapter is subject to all applicable laws governing confidentiality of medical information.

(3) All viatical settlement contracts entered into in this state shall contain a provision no less favorable than that in the event the viator exercises his or her right to rescind the viatical settlement contract, any proceeds previously paid shall be refunded no later than the earliest of (a) thirty days of the date of rescission or (b) fifteen days of payment of the proceeds.

(4) All viatical settlement contracts entered into in this state shall contain a rescission clause no less favorable than that the viator has the unconditional right to rescind the contract on or before the later of (a) thirty days of the date it is signed by all parties or (b) fifteen days of the receipt of the proceeds of the viatical settlement agreement; subject to refund of those proceeds as set forth in subsection (3) of this section.

(5) Time is of the essence in delivery of the proceeds of any viatical settlement contract by the date disclosed to the viator.

(6) No viatical settlement contract entered into in this state may contain any restrictions upon the use of the proceeds of the contract.

(7) Any viatical settlement contract entered into in this state shall establish the terms under which the viatical settlement provider shall pay compensation or anything of value, which compensation is less than the expected death benefit of the insurance policy or certificate of insurance, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

NEW SECTION. Sec. 9. (1) A viatical settlement provider shall not directly or indirectly assign, transfer, sell, resell, or transfer by gift or bequest,

or otherwise convey any insurance policy that is or has been the subject of a viatical settlement agreement, to any person, custodian, investor, investor group, or other entity that does not hold a Washington license as a viatical settlement provider, issued by the commissioner.

(2) Any attempted transfer to any person, custodian, investor, investor group, or other entity not holding such a license is void, and all rights in the insurance policy are restored to the viator as of the date of the purported transfer, except that the viator is not required to return the proceeds of the original viatical settlement agreement to the viatical settlement provider. The commissioner may allow exceptions to this subsection, by rule.

NEW SECTION. Sec. 10. (1) The commissioner may adopt rules as necessary to implement this chapter. This includes, but is not limited to, the adoption of rules regarding minimum capital requirements for viatical settlement providers, training and examination requirements for viatical settlement brokers, requiring a prospective viator to contact his or her life insurer regarding possible accelerated benefits before entering into a viatical settlement agreement, licensing and examination requirements for applicants for a license as a viatical settlement broker, when benefits are or are not reasonable in relation to the rate fee, or other compensation, and bond requirements for either or both viatical settlement providers or viatical settlement brokers.

NEW SECTION. Sec. 11. (1) The legislature finds that the subject of viatical settlements is of vital importance to 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. It is also an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) Any person who is injured by a violation of this chapter may bring a civil action against a viatical settlement provider in superior court to recover his or her actual damages. The court may increase the award of damages to an amount not more than three times the actual damages sustained, and in addition the court may award costs and attorneys' fees to the injured person.

NEW SECTION. Sec. 12. This act may be known and cited as the viatical settlements act.

NEW SECTION. Sec. 13. The provisions of this chapter do not affect the application of chapter 21.20 RCW.

NEW SECTION. Sec. 14. Sections 1 through 13 of this act constitute a new chapter in Title 48 RCW.

NEW SECTION. Sec. 15. A new section is added to chapter 42.17 RCW to read as follows:

The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.— RCW (sections 1 through 13 of this act) are exempt from the disclosure and reporting requirements of this chapter.

Passed the Senate March 14, 1995.

Passed the House April 12, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 162

[Engrossed Senate Bill 5876]

POPULATION DETERMINATIONS AND PROJECTIONS BY THE OFFICE OF FINANCIAL MANAGEMENT

AN ACT Relating to population determinations and projections by the office of financial management; amending RCW 43.62.035; and declaring an emergency.

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

Sec. 1. RCW 43.62.035 and 1991 sp.s. c 32 s 30 are each amended to read as follows:

The office of financial management shall determine the population of each county of the state annually as of April 1st of each year and on or before July 1st of each year shall file a certificate with the secretary of state showing its determination of the population for each county. The office of financial management also shall determine the percentage increase in population for each county over the preceding ten-year period, as of April 1st, and shall file a certificate with the secretary of state by July 1st showing its determination. At least once every ten years the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties and the cities in those counties before final adoption. The county and its cities may provide to the office such information as they deem relevant to the office's projection, and the office shall consider and comment on such information before adoption. Each projection shall be expressed as a reasonable range developed within the standard state high and low projection. The middle range shall represent the office's estimate of the most likely population projection for the county. If any city or county believes that a projection will not accurately reflect actual population growth in a county, it may petition the office to revise the projection accordingly. The office shall complete the first set of ranges for every county by December 31, 1995.

A comprehensive plan adopted or amended before December 31, 1995, shall not be considered to be in noncompliance with the twenty-year growth management planning population projection if the projection used in the comprehensive plan is in compliance with the range later adopted 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 March 15, 1995.

Passed the House April 13, 1995.

Approved by the Governor April 27, 1995.

Filed in Office of Secretary of State April 27, 1995.

CHAPTER 163

[House Bill 1058]

LIQUOR VENDOR APPEALS

AN ACT Relating to the repeal of liquor vendors' appeals as authorized by RCW 41.06.150; amending RCW 41.06.070, and declaring an emergency.

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

Sec. 1. RCW 41.06.070 and 1994 c 264 s 13 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 and 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;

~~((x))~~ (x) 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;

~~((y))~~ (y) All employees of the marine employees' commission;

~~((z))~~ (z) 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 ~~(1)~~(z) 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 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) (w) and (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.

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, 1995.
 Passed the Senate April 10, 1995.
 Approved by the Governor May 1, 1995.
 Filed in Office of Secretary of State May 1, 1995.

CHAPTER 164

[House Bill 1064]

RESIDENT EMPLOYEES ON PUBLIC WORKS

AN ACT Relating to correcting unconstitutional provisions relating to resident employees on public works; amending RCW 35A.40.200; and repealing RCW 39.16.005, 39.16.020, 39.16.030, and 39.16.040.

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 39.16.005 and 1977 ex.s. c 187 s 1, 1973 1st ex.s. c 29 s 1, & 1972 ex.s. c 28 s 1;
- (2) RCW 39.16.020 and 1977 ex.s. c 187 s 2 & 1943 c 246 s 2;
- (3) RCW 39.16.030 and 1943 c 246 s 3; and
- (4) RCW 39.16.040 and 1943 c 246 s 4.

Sec. 2. RCW 35A.40.200 and 1987 c 185 s 4 are each amended to read as follows:

Every code city shall have the authority to make public improvements and to perform public works under authority provided by general law for any class of city and to make contracts in accordance with procedure and subject to the conditions provided therefor, including but not limited to the provisions of: (1) Chapter 39.04 RCW, relating to public works; (2) RCW 35.23.352 relating to competitive bidding for public works, materials and supplies; (3) RCW 9.18.120 and 9.18.150 relating to suppression of competitive bidding; (4) chapter 60.28 RCW relating to liens for materials and labor performed; (5) chapter 39.08 RCW relating to contractor's bonds; (6) chapters 39.12(~~(, 39.16,)~~) and 43.03 RCW relating to prevailing wages; (7) chapter 49.12 RCW relating to hours of labor; (8) chapter 51.12 RCW relating to workers' compensation; (9) chapter 49.60 RCW relating to antidiscrimination in employment; (10) chapter 39.24 RCW relating to the use of Washington commodities; and (11) chapter 39.28 RCW relating to emergency public works.

Passed the House February 3, 1995.
 Passed the Senate April 10, 1995.
 Approved by the Governor May 1, 1995.
 Filed in Office of Secretary of State May 1, 1995.

CHAPTER 165

[Substitute House Bill 1067]

SHORT-ROTATION HARDWOODS—PROPERTY TAXATION

AN ACT Relating to property tax reform; amending RCW 84.33.035 and 84.33.170; and creating a new section.

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

Sec. 1. RCW 84.33.035 and 1986 c 315 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) "Agricultural methods" means the cultivation of trees that are grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising trees such as Christmas trees and short-rotation hardwoods.

(2) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

~~((2))~~ (3) "Forest land" means forest land which is classified or designated forest land under this chapter.

~~((3))~~ (4) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested shall be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department of revenue.

~~((4))~~ (5) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use: PROVIDED, That whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

~~((5))~~ (6) "Short-rotation hardwoods" means hardwood trees, such as but not limited to hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than ten years.

(7) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department of revenue under RCW 84.33.091, provided that for timber harvested from public land and sold under a competitive

bidding process, stumpage value shall mean that actual amount paid to the seller in cash or other consideration. Whenever payment for the stumpage includes considerations other than cash, the value shall be the fair market value of the other consideration, provided that if the other consideration is permanent roads, the value of the roads shall be the appraised value as appraised by the seller.

~~((6))~~ (8) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees and short-rotation hardwoods.

~~((7))~~ (9) "Timber assessed value" for a county means a value, calculated by the department of revenue before October 1 of each year, equal to the total stumpage value of timber harvested from privately owned land in the county during the most recent four calendar quarters for which the information is available multiplied by a ratio. The numerator of the ratio is the rate of tax imposed by the county under RCW 84.33.051 for the year of the calculation. The denominator of the ratio is the composite property tax rate for the county for taxes due in the year of the calculation, expressed as a percentage of assessed value.

~~((8))~~ (10) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated.

Sec. 2. RCW 84.33.170 and 1984 c 204 s 24 are each amended to read as follows:

Notwithstanding any provision of this chapter to the contrary, this chapter shall not exempt from the ad valorem tax nor subject to the excise tax imposed by this chapter, Christmas trees ~~((which are grown on land which has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising such Christmas trees))~~ and short-rotation hardwoods, which are cultivated by agricultural methods, and such land on which such Christmas trees and short-rotation hardwoods stand shall not be taxed as provided in RCW 84.33.100 through 84.33.140. However, short-rotation hardwoods, which are cultivated by agricultural methods, on land classified as timber land under chapter 84.34 RCW, shall be subject to the excise tax imposed under this chapter.

NEW SECTION. **Sec. 3.** This act applies to taxes levied in 1995 for collection in 1996 and thereafter.

Passed the House March 7, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 166

[Engrossed Substitute House Bill 1076]

INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION—ACCOUNTS AND ACCOUNTING

AN ACT Relating to changing interagency committee for outdoor recreation accounts and accounting procedures; amending RCW 43.99.030, 43.99.040, 43.99.060, 43.99.070, 43.99.080, 43.99.095, 43.99.120, 43.99.150, and 46.09.170; adding a new section to chapter 43.99 RCW; adding a new section to chapter 46.09 RCW; and repealing RCW 43.99.144.

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

Sec. 1. RCW 43.99.030 and 1979 c 158 s 109 are each amended to read as follows:

From time to time, but at least once each four years, the director of licensing shall determine the amount or proportion of moneys paid to him as motor vehicle fuel tax which is tax on marine fuel. The director shall make or authorize the making of studies, surveys, or investigations to assist him in making such determination, and shall hold one or more public hearings on the findings of such studies, surveys, or investigations prior to making his determination. The studies, surveys, or investigations conducted pursuant to this section shall encompass a period of twelve consecutive months each time. The final determination by the director shall be implemented as of the ~~((first day of the calendar month, which date falls closest to the mid-point of the time period for))~~ next biennium after the period from which the study data were collected. The director may delegate his duties and authority under this section to one or more persons of the department of licensing if he finds such delegation necessary and proper to the efficient performance of these duties. Costs of carrying out the provisions of this section shall be paid from the marine fuel tax refund account created in RCW 43.99.040, upon legislative appropriation.

Sec. 2. RCW 43.99.040 and 1991 sp.s. c 13 s 42 are each amended to read as follows:

There is created the marine fuel tax refund account in the state treasury. ~~((From time to time, but at least once each biennium,))~~ The director of licensing shall request the state treasurer to refund monthly from the motor vehicle fund amounts which have been determined to be tax on marine fuel. The state treasurer shall refund such amounts and place them in the marine fuel tax refund account to be held for those entitled thereto pursuant to chapter 82.36 RCW and RCW 43.99.050, except that he shall not refund and place in the marine fuel tax refund account for any period for which a determination has been made pursuant to RCW 43.99.030 more than the greater of the following amounts: (1) An

amount equal to two percent of all moneys paid to him as motor vehicle fuel tax for such period, (2) an amount necessary to meet all approved claims for refund of tax on marine fuel for such period.

Sec. 3. RCW 43.99.060 and 1991 sp.s. c 13 s 52 are each amended to read as follows:

~~((There is created))~~ The outdoor recreation account is created in the state treasury~~((, in which shall be deposited all moneys received from the marine fuel tax refund account pursuant to RCW 43.99.070, the proceeds of the bond issue authorized by chapter 43.98 RCW, *RCW 43.31.620 and 43.31.740, and any moneys made available to the state of Washington by the federal government for outdoor recreation not specifically designated for another fund or agency)).~~ Moneys in the account are subject to legislative appropriation. The committee shall administer the account in accordance with chapter 43.98A RCW and this chapter, and shall hold it separate and apart from all other money, funds, and accounts of the committee.

~~Grants, gifts, or other financial assistance ((awarded or designated for a particular purpose, or)),~~ proceeds received from public bodies as administrative cost contributions, and moneys made available to the state of Washington by the federal government for outdoor recreation, ~~may be ((received and, when appropriated by the legislature, may be expended in accordance with the general budget and accounting act))~~ deposited into the account.

Sec. 4. RCW 43.99.070 and 1990 c 42 s 116 are each amended to read as follows:

Upon expiration of the time limited by RCW 82.36.330 for claiming of refunds of tax on marine fuel, the state of Washington shall succeed to the right to such refunds. ~~((From time to time, but at least once each biennium,))~~ The director of licensing, after taking into account past and anticipated claims for refunds from and deposits to the marine fuel tax refund account and the costs of carrying out the provisions of RCW 43.99.030, shall request the state treasurer to transfer monthly from the marine fuel tax refund account an amount equal to the proportion of the moneys in the account representing the motor vehicle fuel tax rate under RCW 82.36.025 in effect on January 1, 1990, to the ~~((outdoor))~~ recreation resource account and the remainder to the motor vehicle fund.

Sec. 5. RCW 43.99.080 and 1971 ex.s. c 140 s 1 are each amended to read as follows:

Moneys transferred to the ~~((outdoor))~~ recreation resource account from the marine fuel tax refund account may be used when appropriated by the legislature, as well as any federal or other funds now or hereafter available, to pay the necessary administrative and coordinative costs of the interagency committee for outdoor recreation established by RCW 43.99.110. All moneys so transferred, except those appropriated as aforesaid, shall be divided into two equal shares and shall be used to benefit watercraft recreation in this state as follows:

(1) One share (~~by the~~) as grants to state agencies for (a) acquisition of title to, or any interests or rights in, marine recreation land, (b) capital improvement of marine recreation land, or (c) matching funds in any case where federal or other funds are made available on a matching basis for purposes described in (a) or (b) of this subsection;

(2) One share as grants to public bodies to help finance (a) acquisition of title to, or any interests or rights in, marine recreation land, or (b) capital improvement of marine recreation land. A public body is authorized to use a grant, together with its own contribution, as matching funds in any case where federal or other funds are made available for purposes described in (a) or (b) of this subsection. The committee may prescribe further terms and conditions for the making of grants in order to carry out the purposes of this chapter.

Sec. 6. RCW 43.99.095 and 1967 ex.s. c 62 s 7 are each amended to read as follows:

Interest earned on funds granted or made available by the committee shall not be expended by the recipient but shall be returned to the (~~outdoor recreation~~) source account (~~of the general fund~~) for disbursement by the committee in accordance with general budget and accounting procedure.

Sec. 7. RCW 43.99.120 and 1983 c 3 s 114 are each amended to read as follows:

Any public body or any agency of state government authorized to acquire or improve public outdoor recreation land which desires funds from the outdoor recreation account, the recreation resource account, or the nonhighway and off-road vehicle activities program account shall submit to the committee a (~~six-year~~) long-range plan for developing outdoor recreation facilities within its authority and detailed plans for the projects sought to be financed from (~~the outdoor recreation~~) these accounts, including estimated cost and such other information as the committee may require. The committee shall analyze all proposed plans and projects, and shall recommend to the governor for inclusion in the budget such projects as it may approve and find to be consistent with an orderly plan for the acquisition and improvement of outdoor recreation lands in the state.

Sec. 8. RCW 43.99.150 and 1965 c 5 s 15 are each amended to read as follows:

The 1967 and subsequent legislatures (~~shall~~) may appropriate funds requested in the budget (~~for state agencies from the outdoor recreation account directly to the state agencies which are to expend such funds, and shall appropriate funds requested in the budget~~) for grants to public bodies and state agencies from the (~~outdoor~~) recreation resource account to the committee for allocation and disbursement. The committee shall include a list of prioritized state agency projects to be funded from the recreation resource account with its biennial budget request.

Sec. 9. RCW 46.09.170 and 1994 c 264 s 36 are each amended to read as follows:

(1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on the tax rate in effect January 1, 1990, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090. The treasurer shall place these funds in the general fund as follows:

(a) Forty percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for planning, maintenance, and management of ORV recreation facilities, nonhighway roads, and nonhighway road recreation facilities. The funds under this subsection shall be expended in accordance with the following limitations:

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

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

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

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

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

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

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

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

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

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

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

(2) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

NEW SECTION. Sec. 10. A new section is added to chapter 43.99 RCW to read as follows:

The recreation resource account is created in the state treasury. Moneys in this account are subject to legislative appropriation. The committee shall administer the account in accordance with this chapter and chapter 67.32 RCW and shall hold it separate and apart from all other money, funds, and accounts of the committee. Moneys received from the marine fuel tax refund account under RCW 43.99.070 shall be deposited into the account. Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and moneys made available to the state of Washington by the federal government for outdoor recreation may be deposited into the account.

NEW SECTION. Sec. 11. A new section is added to chapter 46.09 RCW to read as follows:

The nonhighway and off-road vehicle activities program account is created in the state treasury. Moneys in this account are subject to legislative appropriation. The interagency committee for outdoor recreation shall administer the account for purposes specified in this chapter and shall hold it separate and apart from all other money, funds, and accounts of the interagency committee for outdoor recreation. Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and any moneys made available to the state of Washington by the federal government for outdoor recreation may be deposited into the account.

NEW SECTION. Sec. 12. RCW 43.99.144 and 1979 ex.s. c 24 s 2 are each repealed.

Passed the House March 8, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 167

[House Bill 1081]

SENTENCES FOR ADDITIONAL CRIMES BY FELONS

AN ACT Relating to sentences for additional crimes by felons; amending RCW 9.94A.200 and 9.94A.400; and prescribing penalties.

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

Sec. 1. RCW 9.94A.200 and 1989 c 252 s 7 are each amended to read as follows:

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community service obligation to total or partial confinement, or (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community service hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community service. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court; and

(c) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community service obligations.

~~((3))~~ (4) Nothing in this section prohibits the filing of escape charges if appropriate.

Sec. 2. RCW 9.94A.400 and 1990 c 3 s 704 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the

current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and 9.94A.390(2)(f) or any other provision of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition does not apply in cases involving vehicular assault or vehicular homicide if the victims occupied the same vehicle. However, the sentencing judge may consider multiple victims in such instances as an aggravating circumstance under RCW 9.94A.390.

(b) Whenever a person is convicted of two or more serious violent offenses, as defined in RCW 9.94A.030, arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of zero. The sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence of felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) However, in the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community service, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.120(2), if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

Passed the House February 20, 1995.
Passed the Senate April 10, 1995.
Approved by the Governor May 1, 1995.
Filed in Office of Secretary of State May 1, 1995.

CHAPTER 168

[House Bill 1176]

DISTRICT COURT JUDGES—NUMBER OF

AN ACT Relating to the number of district court judges; amending RCW 3.34.010; and declaring an emergency.

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

Sec. 1. RCW 3.34.010 and 1994 c 111 s 1 are each amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, ~~((two))~~ three; Chelan, two; Clallam, two; Clark, five; Columbia, one; Cowlitz, two; Douglas, ~~((two))~~ one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-six; Kitsap, three; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, seven; Spokane, nine; Stevens, one; Thurston, two; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020.

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 19, 1995.
Passed the Senate April 5, 1995.
Approved by the Governor May 1, 1995.
Filed in Office of Secretary of State May 1, 1995.

CHAPTER 169

[House Bill 1189]

ELECTRONIC DISSEMINATION OF CRIMINAL HISTORY INFORMATION

AN ACT Relating to dissemination of criminal history information; and amending RCW 43.43.815 and 43.43.839.

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

Sec. 1. RCW 43.43.815 and 1982 c 202 s 1 are each amended to read as follows:

(1) Notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the Washington state patrol shall furnish a ~~((transcript of the))~~ conviction record, as defined in RCW 10.97.030, pertaining to any person of whom the Washington state patrol has a record upon the written or electronic request of any employer for the purpose of:

(a) Securing a bond required for any employment;

(b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or

(c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

(2) When an employer has received a conviction record under subsection (1) of this section, the employer shall notify the subject of the record of such receipt within thirty days after receipt of the record, or upon completion of an investigation under subsection (1)(c) of this section. The employer shall make the record available for examination by its subject and shall notify the subject of such availability.

(3) The Washington state patrol shall charge fees for disseminating records pursuant to this section which will cover, as nearly as practicable, the direct and indirect costs to the Washington state patrol of disseminating such records.

(4) Information disseminated pursuant to this section or RCW 43.43.760 shall be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated and shall be used only as necessary for those purposes enumerated in subsection (1) of this section.

(5) Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this section, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this section, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in the action is entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are

alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of chapter 10.97 RCW.

(6) Neither the section, its employees, nor any other agency or employee of the state is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information pursuant to this section or RCW 43.43.760.

(7) The Washington state patrol may adopt rules and forms to implement this section and to provide for security and privacy of information disseminated pursuant hereto, giving first priority to the criminal justice requirements of chapter 43.43 RCW. Such rules may include requirements for users, audits of users, and other procedures to prevent use of criminal history record information inconsistent with this section.

(8) Nothing in this section shall authorize an employer to make an inquiry not otherwise authorized by law, or be construed to affect the policy of the state declared in RCW 9.96A.010, encouraging the employment of ex-offenders.

Sec. 2. RCW 43.43.839 and 1992 c 159 s 8 are each amended to read as follows:

The fingerprint identification account is created in the custody of the state treasurer. All receipts from incremental charges of fingerprint checks requested ~~((by school districts))~~ for noncriminal justice purposes and electronic background requests shall be deposited in the account. Receipts for fingerprint checks by the federal bureau of investigation may also be deposited in the account. Expenditures from the account may be used only for the cost of record checks. Only the chief of the state patrol or the chief's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. No appropriation is required for expenditures prior to July 1, ~~((1995))~~ 1997. After June 30, ~~((1995))~~ 1997, the account shall be subject to appropriation.

Passed the House March 8, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 170

[House Bill 1190]

TRANSPORTATION FUND—TRANSFER OF ACCOUNTS FROM GENERAL FUND TO

AN ACT Relating to transferring the aeronautics account and the aircraft search and rescue, safety, and education account from the general fund to the transportation fund; and amending RCW 82.42.090, 82.48.080, 47.68.250, and 47.68.236.

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

Sec. 1. RCW 82.42.090 and 1991 sp.s. c 13 s 37 are each amended to read as follows:

All moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020 shall be transmitted to the state treasurer and shall be credited to the aeronautics account hereby created in the transportation fund of the state treasury. Moneys collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 shall be transmitted to the state treasurer and credited to the state general fund.

Sec. 2. RCW 82.48.080 and 1987 c 220 s 8 are each amended to read as follows:

The secretary shall regularly pay to the state treasurer the excise taxes collected under this chapter, which shall be credited by the state treasurer as follows: Ninety percent to the general fund and ten percent to the aeronautics account in the ~~((general))~~ transportation fund for administrative expenses.

Sec. 3. RCW 47.68.250 and 1993 c 208 s 7 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))~~ transportation 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.

Sec. 4. RCW 47.68.236 and 1991 sp.s. c 13 s 38 are each amended to read as follows:

There is hereby created in the transportation fund of the state treasury an account to be known as the aircraft search and rescue, safety, and education account. All moneys received by the department under RCW 47.68.233 shall be deposited in such account.

Passed the House February 17, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 171

[Substitute House Bill 1192]

VEHICLE LOAD LIMITS AND FEES

AN ACT Relating to vehicle loads; and reenacting and amending RCW 46.44.041 and 46.44.0941.

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

Sec. 1. RCW 46.44.041 and 1993 c 246 s 1 and 1993 c 102 s 3 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 extremes of any group of 2 or more consecutive - 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							
<u>8 & less</u>	<u>34,000</u>	<u>34,000</u>							
<u>more than 8</u>	<u>38,000</u>	<u>42,000</u>							
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	58,000					
17		48,500	53,500	58,500					
18		49,500	54,000	59,000					
19		50,000	54,500	60,000					
20		51,000	55,500	60,500	66,000				
21		51,500	56,000	61,000	66,500				
22		52,500	56,500	61,500	67,000				

23	53,000	57,500	62,500	68,000			
24	54,000	58,000	63,000	68,500	74,000		
25	54,500	58,500	63,500	69,000	74,500		
26	55,500	59,500	64,000	69,500	75,000		
27	56,000	60,000	65,000	70,000	75,500		
28	57,000	60,500	65,500	71,000	76,000	82,000	
29	57,500	61,500	66,000	71,500	77,000	82,500	
30	58,500	62,000	66,500	72,000	77,500	83,000	
31	59,000	62,500	67,500	72,500	78,000	83,500	
32	60,000	63,500	68,000	73,000	78,500	84,500	90,000
33		64,000	68,500	74,000	79,000	85,000	90,500
34		64,500	69,000	74,500	80,000	85,500	91,000
35		65,500	70,000	75,000	80,500	86,000	91,500
36		66,000	70,500	75,500	81,000	86,500	92,000
37		66,500	71,000	76,000	81,500	87,000	93,000
38		67,500	71,500	77,000	82,000	87,500	93,500
39		68,000	72,500	(77,000)	82,500	88,500	94,000
				<u>77,500</u>			
40		68,500	73,000	78,000	83,500	89,000	94,500
41		69,500	73,500	78,500	84,000	89,500	95,000
42		70,000	74,000	79,000	84,500	90,000	95,500
43		70,500	75,000	80,000	85,000	90,500	96,000
44		71,500	75,500	80,500	85,500	91,000	96,500
45		72,000	76,000	81,000	86,000	91,500	97,500
46		72,500	76,500	81,500	87,000	92,500	98,000
47		73,500	77,500	82,000	87,500	93,000	98,500
48		74,000	78,000	83,000	88,000	93,500	99,000
49		74,500	78,500	83,500	88,500	94,000	99,500
50		75,500	79,000	84,000	89,000	94,500	100,000
51		76,000	80,000	84,500	89,500	95,000	100,500
52		76,500	80,500	85,000	90,500	95,500	101,000
53		77,500	81,000	86,000	91,000	96,500	102,000
54		78,000	81,500	86,500	91,500	97,000	102,500
55		78,500	82,500	87,000	92,000	97,500	103,000
56		79,500	83,000	87,500	92,500	98,000	103,500
57		80,000	83,500	88,000	93,000	98,500	104,000
58			84,000	89,000	94,000	99,000	104,500
59			85,000	(89,000)	94,500	99,500	105,500
				<u>89,500</u>			
60			85,500	90,000	95,000	100,500	105,500
61			86,000	90,500	95,500	101,000	105,500
62			91,000	96,000	86,500	101,500	105,500
63			87,500	92,000	96,500	102,000	105,500
64			88,000	92,500	97,500	102,500	105,500
65			88,500	93,000	98,000	103,000	105,500
66			(89,500)	93,500	98,500	103,500	105,500
				<u>89,000</u>			
67			90,000	94,000	99,000	104,500	105,500
68			90,500	95,000	99,500	105,000	105,500
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.

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. 2. RCW 46.44.0941 and 1994 c 172 s 2 and 1994 c 59 s 1 are each reenacted and 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 fifty-three 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 sixty-one 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
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	\$ 90.00
Continuous movement of a mobile home or manufactured home having nonreducible features not to exceed eighty-five feet in total length and fourteen feet in width, for a period of one year	\$ 150.00
Continuous operation of a two or three-axle collection truck, actually engaged in the 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

~~((Weight over total registered gross weight:~~

Fee per
mile on
state
highways

1-5,999 pounds	\$.07
6,000-11,999 pounds	\$.14
12,000-17,999 pounds	\$.21
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))

Excess weight over legal capacity,
as provided in RCW 46.44.041.

Cost per mile.

<u>0-9,999 pounds</u>	<u>\$.07</u>
<u>10,000-14,999 pounds</u>	<u>\$.14</u>
<u>15,000-19,999 pounds</u>	<u>\$.21</u>
<u>20,000-24,999 pounds</u>	<u>\$.28</u>
<u>25,000-29,999 pounds</u>	<u>\$.35</u>
<u>30,000-34,999 pounds</u>	<u>\$.49</u>
<u>35,000-39,999 pounds</u>	<u>\$.63</u>
<u>40,000-44,999 pounds</u>	<u>\$.79</u>
<u>45,000-49,999 pounds</u>	<u>\$.93</u>
<u>50,000-54,999 pounds</u>	<u>\$ 1.14</u>
<u>55,000-59,999 pounds</u>	<u>\$ 1.35</u>
<u>60,000-64,999 pounds</u>	<u>\$ 1.56</u>
<u>65,000-69,999 pounds</u>	<u>\$ 1.77</u>
<u>70,000-74,999 pounds</u>	<u>\$ 2.12</u>
<u>75,000-79,999 pounds</u>	<u>\$ 2.47</u>
<u>80,000-84,999 pounds</u>	<u>\$ 2.82</u>
<u>85,000-89,999 pounds</u>	<u>\$ 3.17</u>
<u>90,000-94,999 pounds</u>	<u>\$ 3.52</u>
<u>95,000-99,999 pounds</u>	<u>\$ 3.87</u>
<u>100,000 pounds</u>	<u>\$ 4.25</u>

The fee for weights in excess of 100,000 pounds is \$4.25 plus fifty cents for each 5,000 pound increment or portion thereof exceeding 100,000 pounds.

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.

Passed the House February 22, 1995.
Passed the Senate April 10, 1995.
Approved by the Governor May 1, 1995.
Filed in Office of Secretary of State May 1, 1995.

CHAPTER 172

[Substitute House Bill 1220]

AIR OPERATING PERMITS—SEPA EXEMPTION

AN ACT Relating to an exemption from the state environmental policy act for the issuance of air operating permits; 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:

Decisions pertaining to the issuance, renewal, reopening, or revision of an air operating permit under RCW 70.94.161 are not subject to the requirements of RCW 43.21C.030(2)(c).

Passed the House February 22, 1995.
Passed the Senate April 14, 1995.
Approved by the Governor May 1, 1995.
Filed in Office of Secretary of State May 1, 1995.

CHAPTER 173

[Engrossed Substitute House Bill 1247]

THOROUGHBRED RACING

AN ACT Relating to Washington thoroughbred racing; 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 the money being paid into the Washington thoroughbred racing fund continue to be directed to enhanced purses, and that one-half of the money being paid into

the fund continue to be deposited into an escrow or trust account and used for the construction of a new thoroughbred racing facility in western Washington.

Sec. 2. RCW 67.16.105 and 1994 c 159 s 2 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 retain and dedicate: (a) An amount equal to one and one-quarter percent of the daily gross receipts of all parimutuel machines at each race meet to be used solely for the purpose of increasing purses; and (b) an amount equal to one and one-quarter percent of the daily gross receipts of all parimutuel machines at each race meet to be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington. Said percentages shall come from that amount the licensee is authorized to retain under RCW 67.16.170(2). The commission shall adopt such rules as may be necessary to enforce this subsection. ~~((The provisions of this subsection shall apply through June 1, 1995.))~~

(5) In the event the new race track is not constructed before January 1, 2001, all funds including interest, remaining in the escrow or trust account established in subsection (4) of this section, shall revert to the state general fund.

~~((6) Effective June 1, 1995, 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 and one half percent of the daily gross receipts of all parimutuel machines at each race meet. These percentages shall come from the amount that the licensee is authorized to retain under RCW 67.16.170(2) and shall be in addition to those sums paid to the commission in subsection (2) of this section. The commission shall deposit these moneys in the Washington thoroughbred racing fund created in RCW 67.16.250.))~~

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 10, 1995.

Passed the Senate April 5, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 174

[House Bill 1310]

PILOTAGE FEES AND PENALTIES

AN ACT Relating to pilotage services; amending RCW 88.16.070; reenacting and amending RCW 88.16.150; and prescribing penalties.

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

Sec. 1. RCW 88.16.070 and 1987 c 194 s 2 are each amended to read as follows:

All ~~((vessels under enrollment and all))~~ United States and Canadian vessels engaged exclusively in the coasting trade on the west coast of the continental United States (including Alaska) and/or British Columbia shall be exempt from the provisions of this chapter unless a pilot licensed under this chapter be actually employed, in which case the pilotage rates provided for in this chapter shall apply. However, the board shall, upon the written petition of any interested party, and upon notice and opportunity for hearing, grant an exemption from the provisions of this chapter to any vessel that the board finds is a small passenger vessel or yacht which is not more than five hundred gross tons (international), does not exceed two hundred feet in length, and is operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia. Such an exemption shall not be detrimental to the public interest in regard to safe operation preventing loss of human lives, loss of property, and protecting the marine environment of the state of Washington. Such petition shall set out the

general description of the vessel, the contemplated use of same, the proposed area of operation, and the name and address of the vessel's owner. The board shall annually, or at any other time when in the public interest, review any exemptions granted to this specified class of small vessels to insure that each exempted vessel remains in compliance with the original exemption. The board shall have the authority to revoke such exemption where there is not continued compliance with the requirements for exemption. The board shall maintain a file which shall include all petitions for exemption, a roster of vessels granted exemption, and the board's written decisions which shall set forth the findings for grants of exemption. Each applicant for exemption or annual renewal shall pay a fee, payable to the pilotage account. Fees for initial applications and for renewals shall be established by rule, and shall not exceed one thousand five hundred dollars. The board shall report annually to the legislature on such exemptions. Every vessel not so exempt, shall while navigating the Puget Sound and Grays Harbor and Willapa Bay pilotage districts, employ a pilot licensed under the provisions of this chapter and shall be liable for and pay pilotage rates in accordance with the pilotage rates herein established or which may hereafter be established under the provisions of this chapter: PROVIDED, That any vessel inbound to or outbound from Canadian ports is exempt from the provisions of this section, if said vessel actually employs a pilot licensed by the Pacific pilotage authority (the pilot licensing authority for the western district of Canada), and if it is communicating with the vessel traffic system and has appropriate navigational charts, and if said vessel uses only those waters east of the international boundary line which are west of a line which begins at the southwestern edge of Point Roberts then to Alden Point (Patos Island), then to Skipjack Island light, then to Turn Point (Stuart Island), then to Kelleet Bluff (Henry Island), then to Lime Kiln (San Juan Island) then to the intersection of one hundred twenty-three degrees seven minutes west longitude and forty-eight degrees twenty-five minutes north latitude then to the international boundary. The board shall correspond with the Pacific pilotage authority from time to time to ensure the provisions of this section are enforced. If any exempted vessel does not comply with these provisions it shall be deemed to be in violation of this section and subject to the penalties provided in RCW 88.16.150 as now or hereafter amended and liable to pilotage fees as determined by the board. The board shall investigate any accident on the waters covered by this chapter involving a Canadian pilot and shall include the results in its annual report.

Sec. 2. RCW 88.16.150 and 1987 c 485 s 5 and 1987 c 202 s 247 are each reenacted and amended to read as follows:

(1) In all cases where no other penalty is prescribed in this chapter, any violation of this chapter or of any rule or regulation of the board shall be punished as a gross misdemeanor, and all violations may be prosecuted in any court of competent jurisdiction in any county where the offense or any part thereof was committed. In any case where the offense was committed upon a ship, boat or vessel, and there is doubt as to the proper county, the same may be

prosecuted in any county through any part of which the ship, boat or vessel passed, during the trip upon which the offense was committed. All fines collected for any violation of this chapter or any rule or regulation of the board shall within thirty days be paid by the official collecting the same to the state treasurer and shall be credited to the pilotage account: 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.

(2) Notwithstanding any other penalty imposed by this section, any person who shall violate the provisions of this chapter, shall be liable to a maximum civil penalty of ~~((five))~~ ten thousand dollars for each violation. The board may request the attorney general or the prosecuting attorney of the county in which any violation of this chapter occurs to bring an action for imposing the civil penalties provided for in this subsection.

Moneys collected from civil penalties shall be deposited in the pilotage account.

(3) Any master of a vessel who shall knowingly fail to inform the pilot dispatched to said vessel or any agent, owner, or operator, who shall knowingly fail to inform the pilot dispatcher, or any dispatcher who shall knowingly fail to inform the pilot actually dispatched to said vessel of any special directions mandated by the coast guard captain of the port under authority of the Ports and Waterways Safety Act of 1972, as amended, for the handling of such vessel shall be guilty of a gross misdemeanor.

Passed the House February 22, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 175

[House Bill 1311]

PILOTAGE LICENSE FEES

AN ACT Relating to pilotage license fees; amending RCW 88.16.090; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 88.16.090 and 1991 c 200 s 1002 are each amended to read as follows:

(1) A person may pilot any vessel subject to the provisions of this chapter on waters covered by this chapter only if appointed and licensed to pilot such vessels on said waters under and pursuant to the provisions of this chapter.

(2) A person is eligible to be appointed a pilot if the person is a citizen of the United States, over the age of twenty-five years and under the age of seventy years, a resident of the state of Washington at the time of appointment and only if the pilot applicant holds as a minimum, a United States government license as

a master of ocean or near coastal steam or motor vessels of not more than one thousand six hundred gross tons or as a master of inland steam or motor vessels of not more than one thousand six hundred gross tons, such license to have been held by the applicant for a period of at least two years prior to taking the Washington state pilotage examination and a first class United States endorsement without restrictions on that license to pilot in the pilotage districts for which the pilot applicant desires to be licensed, and if the pilot applicant meets such other qualifications as may be required by the board. A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) Pilots shall be licensed hereunder for a term of five years from and after the date of the issuance of their respective state licenses. Such licenses shall thereafter be renewed as of course, unless the board shall withhold same for good cause. Each pilot shall pay to the state treasurer an annual license fee (~~established by the board of pilotage commissioners pursuant to chapter 34.05 RCW, but not to exceed one thousand five hundred dollars, to be placed~~) as follows: For the period beginning July 1, 1995, through June 30, 1999, the fee shall be two thousand five hundred dollars; and for the period beginning July 1, 1999, the fee shall be three thousand dollars. The fees shall be deposited in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(4) Pilot applicants shall be required to pass a written and oral examination administered and graded by the board which shall test such applicants on this chapter, the rules of the board, local harbor ordinances, and such other matters as may be required to compliment the United States examinations and qualifications. The board shall hold examinations at such times as will, in the judgment of the board, ensure the maintenance of an efficient and competent pilotage service. An examination shall be scheduled for the Puget Sound pilotage district if there are three or fewer successful candidates from the previous examination who are waiting to become pilots in that district.

(5) The board shall develop an examination and grading sheet for each pilotage district, for the testing and grading of pilot applicants. The examinations shall be administered to pilot applicants and shall be updated as required to reflect changes in law, rules, policies, or procedures. The board may appoint a special independent examination committee or may contract with a firm knowledgeable and experienced in the development of professional tests for development of said examinations. Active licensed state pilots may be consulted for the general development of examinations but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination development committee it is authorized to pay the members of said committee the same compensation and travel expenses as received by members of the board.

When grading examinations the board shall carefully follow the grading sheet prepared for that examination. The board shall develop a "sample examination" which would tend to indicate to an applicant the general types of questions on pilot examinations, but such sample questions shall not appear on any actual examinations. Any person who willfully gives advance knowledge of information contained on a pilot examination is guilty of a gross misdemeanor.

(6) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or candidate is fully able to carry out the duties of a pilot under this chapter. The board may in its discretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

(7) The board shall prescribe, pursuant to chapter 34.05 RCW, a number of familiarization trips, between a minimum number of twenty-five and a maximum of one hundred, which pilot applicants must make in the pilotage district for which they desire to be licensed. Familiarization trips any particular applicant must make are to be based upon the applicant's vessel handling experience.

(8) The board may require vessel simulator training for a pilot applicant and shall require vessel simulator training for a pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims, and records of familiarization trips of pilot candidates. Willful misrepresentation of such required information by a pilot candidate shall result in disqualification of the candidate.

(10) The board shall adopt rules to establish time periods and procedures for additional training trips and retesting as necessary for pilots who at the time of their licensing are unable to become active pilots.

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, 1995.

Passed the House February 22, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 176

[House Bill 1321]

TUITION RECOVERY TRUST FUND

AN ACT Relating to the tuition recovery trust fund; amending RCW 28B.85.200 and 28B.85.210; and declaring an emergency.

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

Sec. 1. RCW 28B.85.200 and 1994 c 38 s 3 are each amended to read as follows:

The board shall deposit all moneys received under RCW 28B.85.210 into a separate account in the tuition recovery trust fund established under RCW ((43.84.092)) 28C.10.082. Moneys deposited in the fund by the board shall be spent only for the purposes under RCW 28B.85.210. Claims against the fund made by students in degree programs shall be limited to the assets in the board's separate account in the tuition recovery trust fund. Claims against the fund made by students in nondegree programs shall be limited to assets deposited by the work force training and education coordinating board in the tuition recovery trust fund. Disbursements from its account in the fund shall be made on authorization of the board.

Sec. 2. RCW 28B.85.210 and 1994 c 38 s 4 are each amended to read as follows:

(1) The board shall maintain and administer a separate account for degree-granting private vocational schools in the tuition recovery trust fund established under RCW ((43.84.092)) 28C.10.082. The board shall require any degree-granting private vocational school subject to this chapter to make cash deposits into the board's account in the tuition recovery trust fund in an amount determined by the board.

(2) All funds collected for the board's account in the tuition recovery trust fund are payable to the state for the benefit and protection of any student or enrollee of a degree-granting private vocational school's degree programs authorized under this chapter, or in the case of a minor, his or her parent or guardian for purposes including but not limited to the settlement of claims related to school closures and complaints filed under RCW 28B.85.090(1). The board's account 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 28B.85.100 or 28B.85.110. No liability accrues to the state of Washington from claims made against the fund.

(3) The board shall establish by rule a minimum operating balance that is required to be on deposit in its account in the fund by a specified date and maintained thereafter. If disbursements reduce the account below the minimum amount, each participating degree-granting private vocational school shall be assessed a pro rata share of the deficiency created, based on the incremental scale of each school's liability specified in subsection (5) of this section. The

board shall adopt by rule schedules of times and amounts for effecting payments of assessments.

(4) To be and remain authorized under this chapter each degree-granting private vocational school shall, in addition to other requirements under this chapter, make cash deposits into the board's account in the tuition recovery trust fund as a means to assure payment of claims brought under this chapter.

(5) The amount of liability that can be satisfied by this account on behalf of each individual degree-granting private vocational school authorized under this chapter shall be established by the board, based on an incremental scale that recognizes the average amount of unearned prepaid tuition paid for degree programs that is in possession of the degree-granting private vocational school.

(6) The account's liability with respect to each participating degree-granting private vocational school commences on the date of its initial deposit into the fund and ceases one year from the date it is no longer authorized under this chapter.

(7) The board shall adopt by rule a matrix for calculating the deposits into the account required of each degree-granting private vocational school.

(8) No vested right or interest 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 board's account in the fund may be dissolved. All funds deposited are payable to the state for the purposes described under this section. No deposits made into the fund by any degree-granting private vocational school are transferable. If the majority ownership interest in a school is conveyed through sale or other means to different ownership, all contributions made to the date of conveyance accrue to the fund. The new owner commences contributions under provisions applying to new applicants. The board shall maintain its account in the fund, serve appropriate notices to affected entities when scheduled deposits are due, collect deposits, and make disbursements to settle claims against its account.

(9) To settle claims adjudicated under RCW 28B.85.090(1) and claims resulting when a degree-granting private vocational school ceases to provide educational services, the board may make disbursements from its account following the procedure in this subsection.

(a) The board shall attempt to notify all potential claimants. The unavailability of records and other circumstances surrounding a school closure may make it impossible or unreasonable for the board to ascertain the names and locations of each potential claimant but the board shall make reasonable inquiries to secure that information from all likely sources. The board shall then proceed to settle the claims on the basis of information in its possession. The board 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 board shall be relieved of further duty or action on behalf of the claimant under this chapter.

(c) After verification and review, the board may disburse funds from its account in the tuition recovery trust fund to settle or compromise the claims. However, the liability of its account for claims against the closed degree-granting private vocational school shall not exceed the maximum amount of liability assigned to that degree-granting private vocational school under subsection (5) of this section.

(d) In the instance of claims against a closed school, the board shall seek to recover such disbursed funds from the assets of the defaulted degree-granting private vocational school, including but not limited to asserting claims as a creditor in bankruptcy proceedings.

(10) If funds are disbursed to settle claims against a currently authorized degree-granting private vocational school, the board shall make demand upon the authorized school for recovery. The board shall adopt by rule schedules of times and amounts for effecting recoveries. A degree-granting private vocational school's failure to perform subjects its authorization to suspension or revocation under RCW 28B.85.080 in addition to any other remedies available to the board.

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 February 22, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 177

[House Bill 1362]

MUCKLESHOOT TRIBE—RETROCESSION OF CRIMINAL JURISDICTION

AN ACT Relating to retrocession of criminal jurisdiction; and amending RCW 37.12.100, 37.12.110, and 37.12.120.

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

Sec. 1. RCW 37.12.100 and 1994 c 12 s 1 are each amended to read as follows:

It is the intent of the legislature to authorize a procedure for the retrocession, to the Quileute Tribe, Chehalis Tribe, Swinomish Tribe, Skokomish Tribe, Muckleshoot Tribe, and the Colville Confederated Tribes of Washington and the United States, of criminal jurisdiction over Indians for acts occurring on tribal lands or allotted lands within the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Colville Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States.

RCW 37.12.100 through 37.12.140 in no way expand the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Colville tribe's criminal or civil jurisdiction, if any, over non-Indians or fee title property. RCW 37.12.100 through 37.12.140 shall have no effect whatsoever on water rights, hunting and fishing rights, the established pattern of civil jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Colville Indian reservation, the established pattern of regulatory jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Colville Indian reservation, taxation, or any other matter not specifically included within the terms of RCW 37.12.100 through 37.12.140.

Sec. 2. RCW 37.12.110 and 1994 c 12 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the following definitions apply throughout RCW 37.12.100 through 37.12.140:

(1) "Colville reservation" or "Colville Indian reservation," "Quileute reservation" or "Quileute Indian reservation," "Chehalis reservation" or "Chehalis Indian reservation," "Swinomish reservation" or "Swinomish Indian reservation," ~~(or)~~ "Skokomish reservation" or "Skokomish Indian reservation," or "Muckleshoot reservation" or "Muckleshoot Indian reservation" means all tribal lands or allotted lands lying within the reservation of the named tribe and held in trust by the United States or subject to a restriction against alienation imposed by the United States, but does not include those lands which lie north of the present Colville Indian reservation which were included in original reservation boundaries created in 1872 and which are referred to as the "diminished reservation."

(2) "Indian tribe," "tribe," "Colville tribes," or "Quileute, Chehalis, Swinomish, ~~(or)~~ Skokomish, or Muckleshoot tribe" means the confederated tribes of the Colville reservation or the tribe of the Quileute, Chehalis, Swinomish, ~~(or)~~ Skokomish, or Muckleshoot reservation.

(3) "Tribal court" means the trial and appellate courts of the Colville tribes or the Quileute, Chehalis, Swinomish, ~~(or)~~ Skokomish, or Muckleshoot tribe.

Sec. 3. RCW 37.12.120 and 1994 c 12 s 3 are each amended to read as follows:

Whenever the governor receives from the confederated tribes of the Colville reservation or the Quileute, Chehalis, Swinomish, ~~(or)~~ Skokomish, or Muckleshoot tribe a resolution expressing their desire for the retrocession by the state of all or any measure of the criminal jurisdiction acquired by the state pursuant to RCW 37.12.021 over lands of that tribe's reservation, the governor may, within ninety days, issue a proclamation retroceding to the United States the criminal jurisdiction previously acquired by the state over such reservation. However, the state of Washington shall retain jurisdiction as provided in RCW 37.12.010. The proclamation of retrocession shall not become effective until it is accepted by an officer of the United States government in accordance with 25

U.S.C. Sec. 1323 (82 Stat. 78, 79) and in accordance with procedures established by the United States for acceptance of such retrocession of jurisdiction. The Colville tribes and the Quileute, Chehalis, Swinomish, ~~((and))~~ Skokomish, and Muckleshoot tribes shall not exercise criminal or civil jurisdiction over non-Indians.

Passed the House February 22, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 178

[Engrossed Substitute House Bill 1389]

APPRENTICE OPTICIANS

AN ACT Relating to apprenticeship supervision by a physician, registered optometrist, or dispensing optician; and amending RCW 18.34.020 and 18.34.030.

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

Sec. 1. RCW 18.34.020 and 1991 c 3 s 74 are each amended to read as follows:

The term "secretary" wherever used in this chapter shall mean the secretary of health of the state of Washington. The term "apprentice" wherever used in this chapter shall mean a person who shall be designated an apprentice in the records of the secretary at the request of a physician, registered optometrist, or licensee hereunder, ~~((and))~~ who shall thereafter be the primary supervisor of the apprentice. The apprentice may thereafter receive from ~~((such))~~ a physician, registered optometrist, or licensee hereunder training and direct supervision in the work of a dispensing optician.

Sec. 2. RCW 18.34.030 and 1991 c 3 s 75 are each amended to read as follows:

No licensee hereunder may have more than two apprentices in training or under their direct supervision at any one time~~((+PROVIDED, That))~~. However, the ~~((licensee))~~ primary supervisor shall be responsible for the acts of his or her apprentices in the performance of their work in the apprenticeship program~~((+PROVIDED FURTHER, That))~~ and provide the majority of the training and direct supervision received by the apprentice. Apprentices shall complete their apprenticeship in six years and shall not work longer as an apprentice unless the secretary determines, after a hearing, that the apprentice was prevented by causes beyond his or her control from completing his or her apprenticeship and becoming a licensee hereunder in six years.

Passed the House March 8, 1995.
 Passed the Senate April 11, 1995.
 Approved by the Governor May 1, 1995.
 Filed in Office of Secretary of State May 1, 1995.

CHAPTER 179

[Substitute House Bill 1414]

WORKERS' COMPENSATION—ACTING IN COURSE OF EMPLOYMENT—EXCEPTION

AN ACT Relating to the definition of "acting in the course of employment" for industrial insurance; and amending RCW 51.08.013.

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

Sec. 1. RCW 51.08.013 and 1993 c 138 s 1 are each amended to read as follows:

(1) "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. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.

~~((The term))~~ (2) "Acting in the course of employment" does not include:

(a) Time spent going to or coming from the employer's place of business:
~~((a))~~ (i) 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))~~ (ii) on a public transport system using a pass provided in whole or part by the employer.

(b) An employee's participation in social activities, recreational or athletic activities, events or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof, unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate.

Passed the House March 8, 1995.
 Passed the Senate April 7, 1995.
 Approved by the Governor May 1, 1995.
 Filed in Office of Secretary of State May 1, 1995.

CHAPTER 180

[Substitute House Bill 1432]

TAX STATEMENTS—CONTENTS

AN ACT Relating to county financial matters; and amending RCW 84.56.022.

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

Sec. 1. RCW 84.56.022 and 1994 c 301 s 48 are each amended to read as follows:

Each tax statement shall show the amount of ~~((taxes directly approved by the voters at a general election, including but not limited to those under Article VII, section 2 of the state Constitution or chapter 84.55 RCW. The amount of taxes directly approved by the voters at a general election))~~ voter-approved: (1) Regular levies except those authorized in RCW 84.55.050; and (2) excess levies. Such amounts may be shown either as a dollar amount or as a percentage of the total amount of taxes.

Passed the House March 9, 1995.

Passed the Senate April 14, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 181

[House Bill 1465]

PRODUCTIVITY AWARDS—TOPICAL LIST OF

AN ACT Relating to public employment; and amending RCW 41.60.020.

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

Sec. 1. RCW 41.60.020 and 1993 c 467 s 3 are each amended to read as follows:

(1) The board shall formulate, establish, and maintain an employee suggestion program to encourage and reward meritorious suggestions by state employees that will promote efficiency and economy in the performance of any function of state government: PROVIDED, That the program shall include provisions for the processing of suggestions having multi-agency impact and post-implementation auditing of suggestions for fiscal accountability.

(2) The board shall prepare~~((, at least annually,))~~ a topical list of all the productivity awards granted and disseminate this information to all the state government agencies that may be able to adapt them to their procedures.

(3) The board shall adopt rules and regulations necessary or appropriate for the proper administration and for the accomplishment of the purposes of this chapter.

Passed the House March 9, 1995.
 Passed the Senate April 10, 1995.
 Approved by the Governor May 1, 1995.
 Filed in Office of Secretary of State May 1, 1995.

CHAPTER 182

[Substitute House Bill 1507]

HERITAGE CAPITAL PROJECTS PRIORITIZATION

AN ACT Relating to heritage capital projects; adding a new section 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.** The legislature finds that the state of Washington has a rich heritage in historical sites and artifacts that have the potential to provide life-long learning opportunities for citizens of the state. Further, the legislature finds that many of these historical treasures are not readily accessible to citizens, and that there is a need to create an ongoing program to support the capital needs of heritage organizations and facilities.

NEW SECTION. **Sec. 2.** A new section is added to chapter 27.34 RCW to read as follows:

The Washington state historical society shall establish a competitive process to solicit proposals for and prioritize heritage capital projects for potential funding in the state capital budget. The society shall adopt rules governing project eligibility and evaluation criteria. Application for funding of specific projects may be made to the society by local governments, public development authorities, nonprofit corporations, tribal governments, and other entities, as determined by the society. The society, with the advice of leaders in the heritage field, including but not limited to representatives from the office of the secretary of state, the eastern Washington state historical society, and the state office of archaeology and historic preservation, shall establish a prioritized list of heritage capital projects to be recommended to the governor and the legislature by September 1st of each even-numbered year, beginning in 1996. The prioritized list shall be developed through open and public meetings. The governor and the legislature shall consider the prioritized list of heritage projects as a guide for appropriating funds to heritage capital projects beginning with the 1997-99 biennium and thereafter.

Passed the House March 9, 1995.
 Passed the Senate April 7, 1995.
 Approved by the Governor May 1, 1995.
 Filed in Office of Secretary of State May 1, 1995.

CHAPTER 183

[House Bill 1532]

MENTAL HEALTH COUNSELOR CERTIFICATION REQUIREMENTS

AN ACT Relating to the certification of mental health counselors; and amending RCW 18.19.120.

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

Sec. 1. RCW 18.19.120 and 1991 c 3 s 27 are each amended to read as follows:

(1) The department shall issue a certified mental health counselor certificate to any applicant meeting the following requirements:

(a) A master's or doctoral degree in mental health counseling ~~((or a related field from an approved school, or completion of at least thirty graduate semester hours or forty five graduate quarter hours in the field of mental health counseling or the substantial equivalent in both subject content and extent of training;~~

~~(b) Postgraduate supervised mental health counseling practice that meets standards established by the secretary;~~

~~(c) Qualification by an examination, submission of all necessary documents, and payment of required fees; and~~

~~(d) Twenty four months of postgraduate professional experience working in a mental health counseling setting that meets the requirements established by the secretary.~~

~~(2) No applicant may come before the secretary for examination without the initial educational and supervisory credentials as required by this chapter, except that applicants completing a master's or doctoral degree program in mental health counseling or a related field from an approved graduate school before or within eighteen months of July 26, 1987, may qualify for the examination.~~

~~(3) For one year beginning on July 26, 1987, a person may apply for certification without examination. However, if the applicant's credentials are not adequate to establish competence to the secretary's satisfaction, the secretary may require an examination of the applicant during the initial certification period. For the initial certification period, an applicant shall:~~

~~(a) Submit a completed application as required by the secretary, who may require that the statements on the application be made under oath, accompanied by the application fee set by the secretary in accordance with RCW 43.70.250;~~

~~(b) Have a master's or doctoral degree in counseling or a related field from an approved school; and~~

~~(c) Have submitted a completed application as required by the secretary accompanied by the application fee set by the secretary and a request for waiver from the requirements of (b) of this subsection, with documentation to show that the applicant has alternative training and experience equivalent to formal education and supervised experience required for certification.)) or a behavioral science master's or doctoral degree in a related field with the program equivalency as determined by rule by the department based on nationally recognized standards; and~~

(b) Two years of postgraduate practice of counseling under the supervision of a qualified mental health counselor-supervisor or other mental health professional deemed appropriate by the secretary that may be accumulated concurrently with completion of the required program equivalency; and

(c) Qualification by an examination, submission of all necessary documents, and payment of required fees.

~~((4))~~ (2) Certified mental health counseling practice is that aspect of counseling that involves the ((rendering to individuals, groups, organizations, corporations, institutions, government agencies, or the general public a mental health counseling service emphasizing a wellness model rather than an illness model in the application of therapeutic principles, methods, or procedures of mental health counseling to assist the client in achieving effective personal, organizational, institutional, social, educational, and vocational development and adjustment and to assist the client in achieving independence and autonomy in the helping relationship)) provision of professional mental health counseling services to individuals, couples, and families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise. "Certified mental health counseling" means the application of principles of human development, learning theory, group dynamics, and etiology of mental illness and dysfunctional behavior to individuals, couples, families, groups, and organizations, for the purpose of treating mental disorders and promoting optimal mental health and functionality. Certified mental health counseling also includes, but is not limited to the assessment, diagnosis and treatment of mental and emotional disorders, educational techniques developed to prevent such disorders, as well as the application of a wellness model of mental health.

(3) Nothing in this definition shall be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 RCW.

(4) The secretary may establish rules governing mandatory continuing education requirements for a certified mental health counselor applying for renewal.

Passed the House March 7, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 184

[Engrossed House Bill 1550]

CRIMINAL TRESPASS—ARREST WITHOUT WARRANT

AN ACT Relating to authority of police to arrest without a warrant; reenacting and amending RCW 10.31.100; and providing an effective date.

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

Sec. 1. RCW 10.31.100 and 1993 c 209 s 1 and 1993 c 128 s 5 are each reenacted and 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 (10) 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, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, 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~~) 88.12.025 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 RCW 9A.50.020 may arrest such person.

(10) 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).

(11) 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.

(12) 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. 2. This act shall take effect January 1, 1996. Prior to that date, law enforcement agencies, prosecuting authorities, and local governments are encouraged to develop and adopt arrest and charging guidelines regarding criminal trespass.

Passed the House March 10, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 185

[House Bill 1553]

BALLOT TITLES—LENGTH

AN ACT Relating to elections; and amending RCW 29.27.060.

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

Sec. 1. RCW 29.27.060 and 1993 c 256 s 8 are each amended to read as follows:

(1) When a proposed constitution or constitutional amendment, initiative measure, referendum bill, 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~~) twenty-five 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 unit of local government, other than 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.

Passed the House March 9, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 186

[Engrossed House Bill 1603]

DISCLOSURE OF DEPOSIT ACCOUNT INFORMATION

AN ACT Relating to deposit account information; adding new sections to chapter 30.22 RCW; adding a new section to chapter 9.38 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. The definitions in this section apply throughout sections 1 through 3 of this act.

(1) "Customer" means any person, partnership, limited partnership, corporation, trust, or other legal entity that is transacting or has transacted business with a financial institution, that is using or has used the services of an institution, or for which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means state and national banks and trust companies, state and federal savings banks, state and federal savings and loan associations, and state and federal credit unions.

(3) "Law enforcement officer" means an employee of a public law enforcement agency organized under the authority of a county, city, or town and designated to obtain deposit account information by the chief law enforcement officer of that agency.

NEW SECTION. Sec. 2. (1) If a financial institution discloses information in good faith concerning its customer or customers in accordance with this section, it shall not be liable to its customers or others for such disclosure or its consequences. Good faith will be presumed if the financial institution follows the procedures set forth in this section.

(2) A request for financial records made by a law enforcement officer shall be submitted to the financial institution in writing stating that the officer is

conducting a criminal investigation of actual or attempted withdrawals from an account at the institution and that the officer reasonably believes a statutory notice of dishonor has been given pursuant to RCW 62A.3-515, fifteen days have elapsed, and the item remains unpaid. The request shall include the name and number of the account and be accompanied by a copy of:

(a) The front and back of at least one unpaid check or draft drawn on the account that has been presented for payment no fewer than two times or has been drawn on a closed account; and

(b) A statement of the dates or time period relevant to the investigation.

(3) To the extent permitted by federal law, under subsection (2) of this section a financial institution shall within a reasonable time disclose to a requesting law enforcement officer so much of the following information as has been requested concerning the account upon which the dishonored check or draft was drawn, to the extent the records can be located:

(a) The date the account was opened; the details and amount of the opening deposit to the account; and if closed, the reason the account was closed, the date the account was closed, and balance at date of closing;

(b) A copy of the statements of the account for the relevant period including dates under investigation and the preceding and following thirty days and the closing statement, if the account was closed;

(c) A copy of the front and back of the signature card; and

(d) If the account was closed by the financial institution, the name of the person notified of its closing and a copy of the notice of the account's closing and whether such notice was returned undelivered.

(4) Financial institutions may charge requesting parties a reasonable fee for the actual costs of providing services under this chapter. These fees may not exceed rates charged to federal agencies for similar requests. In the event an investigation results in conviction, the court may order the defendant to pay costs incurred by law enforcement under chapter . . . , Laws of 1995 (this act).

NEW SECTION. Sec. 3. Records obtained pursuant to this chapter shall be admitted as evidence in all courts of this state, under Washington rule of evidence 902, when accompanied by a certificate substantially in the following form:

CERTIFICATE

1. The accompanying documents are true and correct copies of the records of [name of financial institution]. The records were made in the regular course of business of the financial institution at or near the time of the acts, events, or conditions which they reflect.

2. They are produced in response to a request made under section 2 of this act.

3. The undersigned is authorized to execute this certificate. I CERTIFY, under penalty of perjury under the laws of the State of Washington, that the foregoing statements are true and correct.

Date

Signature

Place of Signing

Type or Print Name/Title/
Telephone No.

NEW SECTION. Sec. 4. A new section is added to chapter 9.38 RCW to read as follows:

(1) It is a gross misdemeanor for a deposit account applicant to knowingly make any false statement to a financial institution regarding:

- (a) The applicant's identity;
- (h) Past convictions for crimes involving fraud or deception; or
- (c) Outstanding judgments on checks or drafts issued by the applicant.

(2) Each violation of subsection (1) of this section after the third violation is a class C felony punishable as provided in chapter 9A.20 RCW.

NEW SECTION. Sec. 5. Section 4 of this act does not create a duty for financial institutions to request the information set forth in section 4(1) of this act.

NEW SECTION. Sec. 6. Sections 1 through 3 and 5 of this act are each added to chapter 30.22 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.

Passed the House March 8, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 187

[House Bill 1771]

DISHONORED CHECKS—PAYMENT OF COSTS AND FEES

AN ACT Relating to dishonored checks; amending RCW 62A.3-515; and prescribing penalties. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 62A.3-515 and 1993 c 229 s 67 are each amended to read as follows:

(a) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment, the payee or holder of the check is entitled to collect a reasonable handling fee for each instrument. If the check is not paid within fifteen days and after the holder of the check sends a notice of dishonor as provided by RCW 62A.3-520 to the drawer at the drawer's last known address, and if the instrument does not provide for the payment of interest((+)) or

collection costs and attorneys' fees, the drawer of the instrument 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 less. In addition, in the event of court action on the check, the court, after notice and the expiration of the fifteen days, shall award ((a)) reasonable attorneys' fees, 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 does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(b)(1) Subsequent to the commencement of 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 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)) costs, service costs, and statutory attorneys' fees.

(2) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for small claims.

Passed the House March 14, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 188

[House Bill 1790]

DIRECTOR OF COMBINED CITY/COUNTY HEALTH DEPARTMENT—APPOINTMENT

AN ACT Relating to the appointment of the director of a combined city and county health department; amending RCW 70.08.040; and declaring an emergency.

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

Sec. 1. RCW 70.08.040 and 1985 c 124 s 4 are each amended to read as follows:

Notwithstanding any provisions to the contrary contained in any city or county charter, where a combined department is established under this chapter, the director of public health under this chapter shall be appointed by the county executive of the county and the mayor of the city ~~((for a term of four years and until a successor is appointed and confirmed. The director of public health may be reappointed by the county executive of the county and the mayor of the city for additional four year terms)).~~ The appointment shall be effective only upon a majority vote confirmation of the legislative authority of the county and the legislative authority of the city. The director may be removed by the county executive of the county, after consultation with the mayor of the city, upon filing a statement of reasons therefor with the legislative authorities of the county and the city.

***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.*

*Sec. 2 was vetoed. See message at end of chapter.

Passed the House March 8, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 1, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 1, 1995.

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

"I am returning herewith, without my approval as to section 2, House Bill No. 1790 entitled:

"AN ACT Relating to the appointment of the director of a combined city and county health department;"

This bill deletes specific mention of a term of employment for the directors of combined city/county health departments, thereby making their employment consistent with that of the public health officers in other districts.

This legislation includes an emergency clause in section 2. In contacting the principal proponents of this measure, my office has been informed that, although this new language will prove of great importance, no jurisdiction faces an immediate issue due to this change as was the case earlier. Given this change of circumstance, preventing this bill from being subject to a referendum under Article II, section 1(b) of the state Constitution unnecessarily denies the people of this state their power, at their own option, to approve or reject this bill at the polls.

With the exception of section 2, House Bill No. 1790 is approved."

CHAPTER 189

[House Bill 1893]

DEPARTMENT OF CORRECTIONS RECORDS

AN ACT Relating to records of the department of corrections; amending RCW 72.09.050; and adding a new section to chapter 72.09 RCW.

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

Sec. 1. RCW 72.09.050 and 1991 c 363 s 149 are each amended to read as follows:

The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with

local law and justice councils shall be required in the local law and justice plan pursuant to RCW 72.09.300. The agreements may provide for joint operation or operation by the department of corrections, alone, or by any of the other governmental entities, alone. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his or her functions or duties to department employees, including the authority to certify and maintain custody of records and documents on file with the department. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

Pursuant to the authority granted in chapter 34.05 RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action.

NEW SECTION. Sec. 2. A new section is added to chapter 72.09 RCW to read as follows:

The department may charge reasonable fees for the reproduction, shipment, and certification of documents, records, and other materials in the files of the department.

Passed the House March 8, 1995.
 Passed the Senate April 12, 1995.
 Approved by the Governor May 1, 1995.
 Filed in Office of Secretary of State May 1, 1995.

CHAPTER 190

[Engrossed Senate Bill 5019]

INDUSTRIAL DEVELOPMENT SITING

AN ACT Relating to industrial developments; adding a new section to chapter 36.70A 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 36.70A RCW to read as follows:

A county required or choosing to plan under RCW 36.70A.040 may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.

(1) "Major industrial development" means a master planned location for a specific manufacturing, industrial, or commercial business that: (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent. The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.

(2) A major industrial development may be approved outside an urban growth area in a county planning under this chapter if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;
 (b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas; and

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

(3) Final approval of an application for a major industrial development shall be considered an adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070 designating the major industrial development site on the land use map as an urban growth area. Final approval of an application for a major industrial development shall not be considered an amendment to the comprehensive plan for the purposes of RCW 36.70A.130(2) and may be considered at any 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 immediately.***

*Sec. 2 was vetoed. See message at end of chapter.

Passed the Senate April 17, 1995.

Passed the House April 6, 1995.

Approved by the Governor May 1, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 1, 1995.

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

"I am returning herewith, without my approval as to section 2, Engrossed Senate Bill No. 5019 entitled:

"AN ACT Relating to industrial developments;"

This legislation establishes a careful and appropriate process to allow counties to site large industrial facilities and to locate natural resource dependent facilities outside of urban growth areas. The process will be advanced by a county in collaboration with its cities and requires an inventory of available land and a finding that there is not sufficient land available for such development. It provides for infrastructure and environmental protection and establishes safeguards to prevent these developments from contributing to sprawl.

This bill includes an emergency clause in section 2. This section is ill advised when establishing a process of this nature. The process established will take many months to complete and will require the collaborative efforts of counties and cities. Preventing this bill from being subject to a referendum under Article II, section 1(b) of the state Constitution unnecessarily denies the people of this state their power, at their own option, to approve or reject this bill at the polls.

With the exception of section 2, Engrossed Senate Bill No. 5019 is approved."

CHAPTER 191

[Senate Bill 5029]

CHILDREN'S SERVICES ADVISORY COMMITTEE—MEMBERSHIP

AN ACT Relating to the children's services advisory committee; and amending RCW 74.13.031.

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

Sec. 1. RCW 74.13.031 and 1990 c 146 s 9 are each amended to read as follows:

The department shall have the duty to provide child welfare services as defined in RCW 74.13.020, and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Develop a recruiting plan for recruiting an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, and annually submit the plan for review to the house and senate committees on social and health services. The plan shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of neglect, abuse, or abandonment of children, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not

required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report delineating the results to the house and senate committees on social and health services.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, ~~((day care,))~~ licensing of child care agencies, adoption, and services related thereto. At ~~((least one third of the membership shall be composed of child care providers, and at))~~ least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections

(4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

Passed the Senate April 17, 1995.

Passed the House April 5, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 192

[Senate Bill 5142]

PAYMENT AGREEMENTS AUTHORITY EXTENDED

AN ACT Relating to payment agreements; amending RCW 39.96.010 and 39.96.070; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 39.96.010 and 1993 c 273 s 1 are each amended to read as follows:

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))~~ a period of ~~((two))~~ seven years.

Sec. 2. RCW 39.96.070 and 1993 c 273 s 7 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, no governmental entity may enter a payment agreement under RCW 39.96.030 after June 30, ~~((1995))~~ 2000.

(2) The termination of authority to enter payment agreements after June 30, ~~((1995))~~ 2000, shall not affect the validity of any payment agreements or other contracts entered into under RCW 39.96.030 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))~~ 2000, 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 chapter. 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))~~ each December.

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, 1995.

Passed the Senate April 17, 1995.

Passed the House April 13, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 193

[Substitute Senate Bill 5182]

COUNTY FISCAL BIENNIUM BUDGETS AUTHORIZED

AN ACT Relating to county fiscal biennium budgets; 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 36.32 RCW to read as follows:

In lieu of adopting an annual budget, the county legislative authority of any county may adopt an ordinance providing for biennial budgets with a mid-biennium review and modification for the second year of the biennium. The county legislative authority may repeal such an ordinance and revert to adopting annual budgets for a period commencing after the end of a biennial budget cycle. The county legislative authority of a county with a biennial budget cycle may adopt supplemental and emergency budgets in the same manner and subject to the same conditions as the county legislative authority in a county with an annual budget cycle.

The procedure and steps for adopting a biennial budget shall conform with the procedure and steps for adopting an annual budget and with requirements established by the state auditor. The state auditor shall establish requirements for preparing and adopting the mid-biennium review and modification for the second year of the biennium.

Expenditures included in the biennial budget, mid-term modification budget, supplemental budget, or emergency budget shall constitute the appropriations for the county during the applicable period of the budget and every county official shall be limited in making expenditures or incurring liabilities to the amount of the detailed appropriation item or classes in the budget.

The county legislative authority shall hold a public hearing on the proposed county property taxes and proposed road district property taxes prior to imposing the property tax levies.

Passed the Senate April 17, 1995.

Passed the House April 4, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 194

[Substitute Senate Bill 5183]

COUNTY AUDITOR—REVISED DUTIES

AN ACT Relating to county auditors; amending RCW 36.22.010, 36.22.020, 36.22.060, 36.27.020, 36.32.210, 36.32.215, 36.40.040, 36.80.040, and 42.24.150; and repealing RCW 36.32.213.

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

Sec. 1. RCW 36.22.010 and 1984 c 128 s 2 are each amended to read as follows:

The county auditor:

(1) Shall be recorder of deeds and other instruments in writing which by law are to be filed and recorded in and for the county for which he or she is elected;

~~(2) ((Shall examine and settle the accounts of all persons indebted to the county or who hold money payable into the county treasury, certify the amount to the treasurer, and give to the person paying, a discharge upon presentation and filing of the treasurer's receipt therefor, charging the treasurer with the amount;~~

~~(3))~~ (3) Shall keep an account current with the county treasurer, charge ~~((him with))~~ all money received as shown by ~~((his))~~ receipts issued and credit ~~((him with))~~ all disbursements paid out according to the record of settlement of the treasurer with the ~~((board of county commissioners))~~ legislative authority;

~~((4))~~ (3) Shall make out and transmit to the state auditor a complete statement of the state fund account with the county for the past fiscal year certified by his or her certificate and seal, immediately after the completion of the annual settlement of the county treasurer with the ~~((board of county commissioners))~~ legislative authority.

~~((This statement shall show:~~

~~The total amount of tax levy for the current year as returned on the original assessment roll;~~

~~The amount of the supplemental taxes levied by the treasurer;~~

~~The amount collected from delinquent tax rolls of previous years, since the last report;~~

~~The amount of errors, double assessments, and rebates allowed on settlement of the treasurer with the board of county commissioners;~~

~~The amount paid to the state treasurer since the last annual settlement and all such other credits as the county may be entitled to receive in abatement of state taxes;~~

~~The balance of the delinquent tax account for the current year.)~~ The statement must be available to the public;

~~((5))~~ (4) Shall make available a complete exhibit of the prior-year finances of the county ~~((immediately after the July settlement between the county treasurer and the county commissioners. He shall cause the exhibit to be published in some newspaper printed within the county; if there is none, he shall post the exhibit in a conspicuous place in his office.~~

~~The exhibit shall show:~~

~~The amount of taxes assessed in the county for the preceding year for state, county, road, bridge, school, and other purposes;~~

~~The amount of taxes collected on such assessment;~~

~~The amount of money received from other sources;~~

~~The amount received into the treasury;~~

~~The amount still due and not collected;~~

~~The number of warrants issued, the several purposes for which they were issued, the amount for each purpose, and the total amount;~~

~~The total amount of warrants redeemed;~~

~~The amount of outstanding warrants;~~

~~The present condition of the treasury;~~

~~Remarks))~~ including, but not limited to, a statement of financial condition and financial operation in accordance with standards developed by the state auditor. This exhibit shall be made available after the financial records are closed for the prior year.

~~((6))~~ (5) Shall make out a register of all warrants legally authorized and directed to be issued by ~~((any superior court cost bill, not earlier than ten days after receipt thereof, or by the board of county commissioners))~~ the legislative body at any regular ~~((, adjourned,))~~ or special meeting ~~((thereof, not earlier than ten days after adjournment. He shall also make out a certified copy of the register of warrants under his hand and seal and deliver it forthwith to the county treasurer who shall record it in a book kept for that purpose)).~~ The auditor shall make the data available to the county treasurer. The auditor shall ~~((file and carefully preserve))~~ retain the original ~~((in his office))~~ of the register of warrants for future reference. ~~((The register of warrants shall be part of the records of the county.~~

~~(7) Shall examine the books of the treasurer between the first and tenth of each month and see that they have been correctly kept.~~

~~(8))~~ (6) As clerk of the board of county commissioners, shall:

Record all of the proceedings of the ~~((board))~~ legislative authority;

Make full entries of all of their resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

Record the vote of each member on any question upon which there is a division or at the request of any member present;

Sign all orders made and warrants issued by order of the ~~((board))~~ legislative authority for the payment of money;

Record the reports of the county treasurer of the receipts and disbursements of the county;

Preserve and file all accounts acted upon by the ~~((board))~~ legislative authority;

Preserve and file all petitions and applications for franchises and record the action of the ~~((board))~~ legislative authority thereon;

Record all orders levying taxes;

Perform all other duties required by any rule or order of the ~~((board))~~ legislative authority.

Sec. 2. RCW 36.22.020 and 1963 c 4 s 36.22.020 are each amended to read as follows:

It shall be the duty of the county auditor of each county, within fifteen days after the adjournment of each regular ~~((term))~~ session, to publish a summary of the proceedings of the ~~((board of county commissioners))~~ legislative authority at such term, in any newspaper published in the county or having a general circulation therein, or the auditor may post copies of such proceedings in three of the most public places in the county. The seal of the county commissioners for each county, used by the county auditor as clerk to attest the proceedings of the ~~((board of county commissioners))~~ legislative authority, shall be and remain in the custody of the county auditor ~~((as clerk of the board))~~, and ~~((said))~~ the auditor is hereby authorized to use such seal in attestation of all ~~((his))~~ official acts, whether as clerk of ~~((said board))~~ the legislative authority, as auditor or recorder of deeds; and all certificates, exemplifications of records, or other acts ~~((by him))~~ performed as county auditor, certified under the seal of ~~((said))~~ the county commissioners, ~~((heretofore made or hereafter to be made))~~ pursuant to this section, in this state, shall be as valid and legally binding as though attested by a seal of office of the ~~((said))~~ county auditor.

Sec. 3. RCW 36.22.060 and 1963 c 4 s 36.22.060 are each amended to read as follows:

~~((He shall carefully keep proper warrant books, and))~~ The auditor shall maintain a record of when a warrant is issued ~~((the stub shall be carefully retained, upon which shall be recorded the))~~. The record shall include the warrant number, date, name of payee, amount, nature of claims, or services ~~((briefly stated and by whom allowed. In all cases where multiple warrants are issued for one claim the auditor must preserve as many stub entries as there have been warrants issued, noting upon each stub the claim for which it was issued and the number of warrants which aggregate the amount of the entire claim allowed))~~ provided.

Sec. 4. RCW 36.27.020 and 1987 c 202 s 205 are each amended to read as follows:

The prosecuting attorney shall:

(1) Be legal adviser of the (~~board of county commissioners~~) legislative authority, giving them his or her written opinion when required by the (~~board~~) legislative authority or the chairperson thereof touching any subject which the (~~board~~) legislative authority may be called or required to act upon relating to the management of county affairs;

(2) Be legal adviser to all county and precinct officers and school directors in all matters relating to their official business, and when required draw up all instruments of an official nature for the use of said officers;

(3) Appear for and represent the state, county, and all school districts subject to the supervisory control and direction of the attorney general in all criminal and civil proceedings in which the state or the county or any school district in the county may be a party;

(4) Prosecute all criminal and civil actions in which the state or the county may be a party, defend all suits brought against the state or the county, and prosecute actions upon forfeited recognizances and bonds and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or the county;

(5) Attend and appear before and give advice to the grand jury when cases are presented to it for consideration and draw all indictments when required by the grand jury;

(6) Institute and prosecute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of felonies when the prosecuting attorney has information that any such offense has been committed and the prosecuting attorney shall for that purpose attend when required by them if the prosecuting attorney is not then in attendance upon the superior court;

(7) Carefully tax all cost bills in criminal cases and take care that no useless witness fees are taxed as part of the costs and that the officers authorized to execute process tax no other or greater fees than the fees allowed by law;

(8) Receive all cost bills in criminal cases before district judges at the trial of which the prosecuting attorney was not present, before they are lodged with the (~~board of county commissioners~~) legislative authority for payment, whereupon the prosecuting attorney may retax the same and the prosecuting attorney must do so if the (~~board of county commissioners~~) legislative authority deems any bill exorbitant or improperly taxed;

(9) Present all violations of the election laws which may come to the prosecuting attorney's knowledge to the special consideration of the proper jury;

(10) (~~Examine at least once in each year the public records and books of the auditor, assessor, treasurer, superintendent of schools, and sheriff of his or her county and report to the board of county commissioners every failure, refusal, omission, or neglect of such officers to keep such records and books as required by law;~~

(11)) Examine once in each year the official bonds of all county and precinct officers and report to the (~~board of county commissioners~~) legislative authority any defect in the bonds of any such officer;

~~((12))~~ (11) Make an annual report to the governor as of the 31st of December of each year setting forth the amount and nature of business transacted by the prosecuting attorney in that year with such other statements and suggestions as the prosecuting attorney may deem useful;

~~((13))~~ (12) Send to the state liquor control board at the end of each year a written report of all prosecutions brought under the state liquor laws in the county during the preceding year, showing in each case, the date of trial, name of accused, nature of charges, disposition of case, and the name of the judge presiding;

~~((14))~~ (13) Seek to reform and improve the administration of criminal justice and stimulate efforts to remedy inadequacies or injustice in substantive or procedural law.

Sec. 5. RCW 36.32.210 and 1969 ex.s. c 182 s 2 are each amended to read as follows:

~~((1))~~ Each board of county commissioners of the several counties of the state of Washington shall, on the first Monday of each year (~~beginning with the year 1964~~), file with the auditor of the county (~~wherein such commissioner resides~~) a statement verified by oath (~~of such county commissioner~~) showing for the twelve months period ending December 31st of the preceding year, the following:

~~((a))~~ (1) A full and complete inventory of all (~~tools, machinery, equipment and appliances belonging to the district of such commissioner used or intended to be used in any public work, except the repair, construction or maintenance of any road, within said county for which public funds are to be expended in whole or in part and which said~~) capitalized assets shall be kept in accordance with standards established by the state auditor. This inventory shall be segregated to show the following subheads:

~~((i))~~ (a) The assets, including equipment, on hand, together with a statement of the date when acquired, the amount paid therefor, (~~the present value,~~) the estimated life thereof and a sufficient description to fully identify such property;

~~((ii))~~ (b) All equipment of every kind or nature sold or disposed of in any manner during such preceding twelve months period, together with the name of the purchaser, the amount paid therefor, whether or not the same was sold at public or private sale, the reason for such disposal and a sufficient description to fully identify the same;

~~((iii))~~ (c) All the equipment purchased during said period, together with the date of purchase, the amount paid therefor, whether or not the same was bought under competitive bidding, the price paid therefor and the probable life thereof, the reason for making the purchase and a sufficient description to fully identify such property;

~~((b) The exact amount of money derived from sources other than tax levy coming into possession or under the control of such commissioner for or on account of such district or of the commissioner making such statement, with the~~

~~name of the party paying the same, the source from which derived, why so derived, and the date of its reception.~~

~~(e))~~ (2) The person to whom such money or any part thereof was paid and why so paid and the date of such payment.

~~((2) No county commissioner shall maintain official records which duplicate the records of the county road engineer or any part thereof.))~~

Sec. 6. RCW 36.32.215 and 1963 c 4 s 36.32.215 are each amended to read as follows:

~~((Such))~~ Inventories shall be filed with the county auditor as a public record and shall be open to the inspection of the public~~((, provided further that such county auditor shall cause such inventory and/or inventories to be published once in the official newspaper of such county within five days after the filing thereof)).~~

Sec. 7. RCW 36.40.040 and 1973 c 39 s 1 are each amended to read as follows:

Upon receipt of the estimates the auditor shall prepare the county budget which shall set forth the complete financial program of the county for the ensuing fiscal year, showing the expenditure program and the sources of revenue by which it is to be financed.

The revenue section shall set forth the estimated receipts from sources other than taxation for each office, department, service, or institution for the ensuing fiscal year, the actual receipts for the first six months of the current fiscal year and the actual receipts for the last completed fiscal year, the estimated surplus at the close of the current fiscal year and the amount proposed to be raised by taxation.

The expenditure section shall set forth in comparative and tabular form by offices, departments, services, and institutions the estimated expenditures for the ensuing fiscal year, the appropriations for the current fiscal year, the actual expenditures for the first six months of the current fiscal year including all contracts or other obligations against current appropriations, and the actual expenditures for the last completed fiscal year.

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor through the division of municipal corporations after consultation with the Washington state association of counties and the Washington state association of elected county officials.

The county auditor shall set forth separately in the annual budget to be submitted to the ~~((board of county commissioners))~~ legislative authority the total amount of emergency warrants issued during the preceding fiscal year, together with a statement showing the amount issued for each emergency, and the ~~((board))~~ legislative authority shall include in the annual tax levy, a levy sufficient to raise an amount equal to the total of such warrants: PROVIDED,

That the ((board)) legislative authority may fund the warrants or any part thereof into bonds instead of including them in the budget levy.

Sec. 8. RCW 36.80.040 and 1969 ex.s. c 182 s 9 are each amended to read as follows:

The office of county engineer shall be an office of record; the county road engineer shall record and file in his or her office, all matters concerning the public roads, highways, bridges, ditches, or other surveys of ((his)) the county, with the original papers, documents, petitions, surveys, repairs, and other papers, in order to have the complete history of any such road, highway, bridge, ditch, or other survey; and shall number each construction or improvement project. The county engineer is not required to retain and file financial documents retained and filed in other departments in the county.

Sec. 9. RCW 42.24.150 and 1969 c 74 s 4 are each amended to read as follows:

On or before the ((tenth)) fifteenth day following the close of the authorized travel period for which expenses have been advanced to any officer or employee, he shall submit to the appropriate official a fully itemized travel expense voucher, for all reimbursable items legally expended, accompanied by the unexpended portion of such advance, if any.

Any advance made for this purpose, or any portion thereof, not repaid or accounted for in the time and manner specified herein, shall bear interest at the rate of ten percent per annum from the date of default until paid.

NEW SECTION. **Sec. 10.** RCW 36.32.213 and 1963 c 4 s 36.32.213 are each repealed.

Passed the Senate April 17, 1995.

Passed the House April 6, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 195

[Senate Bill 5239]

SEX OFFENDER REGISTRATION—COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES—CONVICTEES

AN ACT Relating to registration of sex offenders; and amending RCW 9A.44.130 and 9A.44.140.

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

Sec. 1. RCW 9A.44.130 and 1994 c 84 s 2 are each amended to read as follows:

(1) Any adult or juvenile residing in this state (1) who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence.

(2) The person shall provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; and (h) social security number.

(3)(a) Sex offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses:

(i) **SEX OFFENDERS IN CUSTODY.** Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(ii) **SEX OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders, who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(iv) **SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders who move to Washington state from another state that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state, federal statutes, or Washington state for offenses committed on or after February 28, 1990. Sex offenders from other states who, when they move to Washington,

are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (7) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within ten days of establishing the new residence. If any person required to register pursuant to this section moves to a new county, the person must register with the county sheriff in the new county within ten days of establishing the new residence. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.

(5) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex offense by RCW 9.94A.030 and any violation of RCW 9.68A.090.

(7) A person who knowingly fails to register as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor.

Sec. 2. RCW 9A.44.140 and 1991 c 274 s 3 are each amended to read as follows:

(1) The duty to register under RCW 9A.44.130 shall end:

(a) For a person convicted of a class A felony: Such person may only be relieved of the duty to register under subsection (2) or (3) of this section.

(b) For a person convicted of a class B felony: Fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of any new offenses.

(c) For a person convicted of a class C felony or any violation of RCW 9.68A.090: Ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses.

(2) Any person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions in other states, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. Except as provided in subsection (3) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(3) An offender having a duty to register under RCW 9A.44.130 for a sex offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after adjudication, and may consider other factors. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was fifteen years of age or older only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was under the age of fifteen if the petitioner (a) has not been adjudicated of any additional sex offenses during the twenty-four months following the adjudication for the sex offense giving rise to the duty to register, and (b) the petitioner proves by a preponderance of the evidence that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(4) Unless relieved of the duty to register pursuant to this section, a violation of RCW 9A.44.130 is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

(5) Nothing in RCW 9.94A.220 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to RCW 9A.44.130.

Passed the Senate April 17, 1995.

Passed the House April 4, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 196

[Senate Bill 5275]

CONSOLIDATION OF CITIES AND TOWNS

AN ACT Relating to consolidation of cities and towns; amending RCW 35.10.460, 35.10.470, 35.10.480, 35.10.490, 35.21.010, and 35.10.420; and adding a new section to chapter 35.10 RCW. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 35.10.460 and 1985 c 281 s 9 are each amended to read as follows:

~~((Ballot titles on the questions shall be prepared as provided in RCW 35A.29.120.))~~ If a proposal for assumption of indebtedness is to be submitted to the voters of a city in which the indebtedness did not originate, the proposal shall be separately stated and the ballots shall contain, as a separate proposition to be voted on, the words "For Assumption of Indebtedness to be paid by the levy of annual property taxes in excess of regular property taxes" and "Against Assumption of Indebtedness to be paid by the levy of annual property taxes in excess of regular property taxes" or words equivalent thereto. If the question of the form or plan of government is to be submitted to the voters, the question shall be separately stated and the ballots shall contain, as a separate proposition to be voted on, the option of a voter to select one of the three forms or plans of government. If the question of the name of the proposed consolidated city is to be submitted to the voters, the question shall be separately stated and the ballots shall contain, as a separate proposition to be voted on, the option of a voter to select one of the names of the proposed consolidated city.

Sec. 2. RCW 35.10.470 and 1985 c 281 s 10 are each amended to read as follows:

The county canvassing board in each county involved shall canvass the returns in each election. The votes cast in each of such cities shall be canvassed separately, and the statement shall show the whole number of votes cast, the number of votes cast in each city for consolidation, and the number of votes cast in each city against such consolidation. If a proposal for assumption or indebtedness was voted upon in a city in which the indebtedness did not

originate, the statement shall show the number of votes cast in such a city for assumption of indebtedness and the number of votes cast against assumption of indebtedness. If a question of the form or plan of government was voted upon, the statement shall show the number of votes cast in each city for each of the optional forms or plans of government. If a name for the proposed consolidated city was voted upon, the statement shall show the number of votes cast in each city for each optional name. A certified copy of such statement shall be filed with the legislative body of each of the cities proposed to be consolidated.

If it appears from such statement of canvass that a majority of the votes cast in each of the cities were in favor of consolidation, the consolidation shall be authorized and shall be effective when the newly elected legislative body members assume office, as provided in RCW 35.10.480.

If a question of the form or plan of government was voted upon, that form or plan receiving the greatest combined number of votes shall become the form or plan of government for the consolidated city. If two or three of the forms or plans of government received the same highest number of votes, the form or plan of government shall be chosen by lot between those receiving the same highest number, where the mayor of the largest of the cities proposed to be consolidated draws the lot at a public meeting.

If a proposition to assume indebtedness was submitted to voters of a city in which the indebtedness did not originate, the proposition shall be deemed approved if approved by a majority of at least three-fifths of the voters of the city, and the number of persons voting on the proposition constitutes not less than forty percent of the number of votes cast in the city at the last preceding general election. Approval of the proposition authorizes annual property taxes to be levied on the property within the city in which the indebtedness did not originate that are in excess of regular property taxes. However, if the general indebtedness in question was incurred by action of a city legislative body, a proposition for assuming the indebtedness need only be approved by a simple majority vote of the voters of the city in which such indebtedness did not originate.

If a question of the name of the proposed consolidated city was voted upon, that name receiving the greatest combined number of votes shall become the name of the consolidated city. If two proposed names receive the same number of votes, the name shall be chosen by lot, where the mayor of the largest of the cities proposed to be consolidated draws the lot at a public meeting.

Sec. 3. RCW 35.10.480 and 1985 c 281 s 11 are each amended to read as follows:

If the voters of each of the cities proposed to consolidate approve the consolidation, elections to nominate and elect the elected officials of the consolidated city shall be held at times specified in RCW 35A.02.050. If the joint resolution or the petitions prescribe that councilmembers of the consolidated city shall be elected from wards, then the councilmembers shall be elected from

wards under RCW 35A.12.180. Terms shall be established as if the city is initially incorporating.

The newly elected officials shall take office immediately upon their qualification. The effective date of the consolidation shall be when a majority of the newly elected members of the legislative body assume office. The clerk of the newly consolidated city shall transmit a duly certified copy of an abstract of the votes to authorize the consolidation and of the election of the newly elected city officials to the secretary of state and the office of financial management.

Sec. 4. RCW 35.10.490 and 1985 c 281 s 12 are each amended to read as follows:

A joint resolution or the petitions may prescribe the name of the proposed consolidated city or may provide that a ballot proposition to determine the name of the proposed consolidated city be submitted to the voters of the cities proposed to be consolidated. If two alternative names are submitted, the name receiving the simple majority vote of the voters voting on the question shall become the name of the consolidated city. If the name for the proposed consolidated city is not prescribed by the joint resolution or petition, or a proposition on the name is not submitted to the voters of the cities proposed to be consolidated, then the newly consolidated city shall be known as the city of (listing the names of the cities that were consolidated in alphabetical order). The legislative body of the newly consolidated city may present another name or two names for the newly consolidated city to the city voters for their approval or rejection at the next municipal general election held after the effective date of the consolidation. If only one alternative name is submitted, this alternative name shall become the name of the consolidated city if approved by a simple majority vote of the voters voting on the question. If two alternative names are submitted, the name receiving the simple majority vote of the voters voting on the question shall become the name of the consolidated city.

Sec. 5. RCW 35.21.010 and 1991 c 363 s 37 are each amended to read as follows:

(1) Municipal corporations now or hereafter organized are bodies politic and corporate under the name of the city of, or the town of, as the case may be, and as such may sue and be sued, contract or be contracted with, acquire, hold, possess and dispose of property, subject to the restrictions contained in other chapters of this title, having a common seal, and change or alter the same at pleasure, and exercise such other powers, and have such other privileges as are conferred by this title(~~(+PROVIDED, That)~~). However, not more than two square miles in area shall be included within the corporate limits of a town having a population of fifteen hundred or less, or located in a county with a population of one million or more, and not more than three square miles in area shall be included within the corporate limits of a town having a population of more than fifteen hundred in a county with a population of less

than one million, nor shall more than twenty acres of unplatted land belonging to any one person be taken within the corporate limits of a town without the consent of the owner of such unplatted land(~~(-- PROVIDED FURTHER, That))~~.

(2) Notwithstanding subsections (1) and (3) of this section, a town located in three or more counties is excluded from a limitation in square mileage.

(3) Except as provided in subsection (2) of this section, the original incorporation of a town shall be limited to an area of not more than one square mile and a population as prescribed in RCW 35.01.040.

NEW SECTION. Sec. 6. A new section is added to chapter 35.10 RCW to read as follows:

Unless a commission form of government is prescribed or submitted to the voters under RCW 35.10.430, a joint resolution or petition may prescribe that wards be used to elect the councilmembers of the consolidated city. The joint resolution or petition must contain a map of the proposed consolidated city that clearly delineates the boundaries of each ward. Each ward in the proposed consolidated city shall contain approximately the same population. To the greatest extent possible, the integrity of the boundaries of the cities that are proposed to be consolidated shall be respected when the wards are drawn so that the territory within each city is: (1) Included within the fewest number of wards, to the extent the city has a population that is greater than the maximum population established for each ward; or (2) included wholly within one ward, to the extent the city has a population that is equal to or less than the maximum population established for each ward. After the election specified in RCW 35.10.480, election wards may be modified in the manner specified in RCW 35A.12.180.

Sec. 7. RCW 35.10.420 and 1985 c 281 s 5 are each amended to read as follows:

The submission of a ballot proposal to the voters of two or more contiguous cities for the consolidation of these contiguous cities may also be caused by the filing of a petition with the legislative body of each such city, signed by the voters of each city in number equal to not less than ten percent of ~~((the votes cast))~~ voters who voted in the city at the last general municipal election therein, seeking consolidation of such contiguous cities. A copy of the petition shall be forwarded immediately by each city to the auditor of the county or counties within which that city is located.

The county auditor or auditors shall determine the sufficiency of the signatures in each petition within ten days of receipt of the copies and immediately notify the cities proposed to be consolidated of the sufficiency. If each of the petitions is found to have sufficient valid signatures, the auditor or auditors shall call a special election at which the question of whether such cities shall consolidate shall be submitted to the voters of each of such cities. If a general election is to be held more than ninety days but not more than one hundred eighty days after the filing of the last petition, the question shall be

submitted at that election. Otherwise the question shall be submitted at a special election to be called for that purpose at the next special election date, as specified in RCW 29.13.020, that occurs ninety or more days after the date when the last petition was filed.

If each of the petitions is found to have sufficient valid signatures, the auditor or auditors also shall notify the county legislative authority of each county in which the cities are located of the proposed consolidation.

Petitions shall conform with the requirements for form prescribed in RCW 35A.01.040, except different colored paper may be used on petitions circulated in the different cities. A legal description of the cities need not be included in the petitions.

Passed the Senate April 17, 1995.

Passed the House April 5, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 197

[Senate Bill 5282]

CONFIDENTIALITY OF DEPARTMENT OF REVENUE INFORMATION

AN ACT Relating to confidentiality of certain information of the department of revenue; amending RCW 82.32.330; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 82.32.330 and 1991 c 330 s 1 are each amended to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person

under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency; ~~((and))~~

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue (~~nor any officer, employee, agent, or representative thereof~~) nor any other person may disclose any return or tax information.

(3) The foregoing, however, shall not prohibit the department of revenue (~~or an officer, employee, agent, or representative thereof~~) from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or ~~((failed--filed))~~ filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state; ~~((or))~~

(i) Disclosing any such return or tax information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the Department of Defense, the United States customs service, the coast guard of the United States, and the United States department of transportation, or any authorized representative thereof, for official purposes;

(j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410; ~~((or))~~

(k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose; or

(l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.17 RCW

or is a document maintained by a court of record not otherwise prohibited from disclosure.

(4) (a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3) (f), (g), (h), or (i) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, shall upon conviction be punished by a fine not exceeding one thousand dollars and, if the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter.

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, 1995.

Passed the Senate April 17, 1995.

Passed the House April 11, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 198

[Substitute Senate Bill 5308]

EXAMINATIONS USED IN THE CREDENTIALING OF HEALTH CARE PROFESSIONALS

AN ACT Relating to the use of examinations in the credentialing of health professionals; amending RCW 18.25.030, 18.32.050, 18.34.080, 18.29.021, 18.29.120, 18.53.060, 18.54.070, 18.64A.020, 18.74.035, 18.83.070, 18.83.072, 18.92.030, 18.92.100, 18.108.030, 18.108.050, 18.108.073, 18.30.020, 18.30.080, 18.30.090, 18.30.100, 18.30.110, 18.30.130, and 18.30.140; reenacting and amending RCW 18.74.023; adding a new section to chapter 18.130 RCW; repealing RCW 18.30.070; and declaring an emergency.

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

Sec. 1. RCW 18.25.030 and 1994 sp.s. c 9 s 111 are each amended to read as follows:

Examinations for license to practice chiropractic shall be ~~((made))~~ developed and administered, or approved, or both, by the commission according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. ~~((Such application))~~ The commission may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The applicant shall be designated by a number instead of his or her name, so that the identity shall not be discovered or disclosed to the members of the commission until after the examination papers are graded.

~~((All examinations shall be in whole or in part in writing, the subject of which shall be as follows))~~ Examination subjects may include the following: Anatomy, physiology, spinal anatomy, microbiology-public health, general diagnosis, neuromuscularskeletal diagnosis, x-ray, principles of chiropractic and adjusting, as taught by chiropractic schools and colleges ~~((The commission shall~~

~~administer a practical examination to applicants which shall consist of diagnosis, principles and practice, x-ray, and adjustive technique), and any other subject areas~~ consistent with chapter 18.25 RCW. ~~((A license shall be granted to all applicants whose score over each subject tested is seventy five percent.))~~ The commission shall set the standards for passing the examination. The commission may enact additional requirements for testing administered by the national board of chiropractic examiners.

Sec. 2. RCW 18.32.050 and 1994 sp.s. c 9 s 212 are each amended to read as follows:

Commission members shall be compensated and reimbursed pursuant to this section for their activities in administering a multi-state licensing examination pursuant to the commission's compact or agreement with another state or states or with organizations formed by several states. ~~((Compensation or reimbursement received by a commission member from another state, or organization formed by several states, for such member's services in administering a multi-state licensing examination, shall be deposited in the state general fund.))~~

Sec. 3. RCW 18.34.080 and 1991 c 3 s 77 are each amended to read as follows:

The examination shall determine whether the applicant has a thorough knowledge of the principles governing the practice of a dispensing optician which is hereby declared necessary for the protection of the public health. The examining committee may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The secretary shall license successful examinees and the license shall be conspicuously displayed in the place of business of the licensee.

Sec. 4. RCW 18.29.021 and 1991 c 3 s 46 are each amended to read as follows:

(1) The department shall issue a license to any applicant who, as determined by the secretary:

(a) Has successfully completed an educational program approved by the secretary. This educational program shall include course work encompassing the subject areas within the scope of the license to practice dental hygiene in the state of Washington;

(b) Has successfully completed an examination administered or approved by the dental hygiene examining committee; and

(c) Has not engaged in unprofessional conduct or is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

(2) Applications for licensure shall be submitted on forms provided by the department. The department may require any information and documentation necessary to determine if the applicant meets the criteria for licensure as provided in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250. The fee shall be submitted with the application.

Sec. 5. RCW 18.29.120 and 1991 c 3 s 52 are each amended to read as follows:

The secretary in consultation with the Washington dental hygiene examining committee shall:

- (1) Adopt rules in accordance with chapter 34.05 RCW necessary to prepare and conduct examinations for dental hygiene licensure;
- (2) Require an applicant for licensure to pass an examination consisting of written and practical tests upon such subjects and of such scope as the committee determines;
- (3) Set the standards for passage of the examination;
- (4) Administer at least two examinations each calendar year ~~((in conjunction with examinations for licensure of dentists under chapter 18.32 RCW)).~~ Additional examinations may be given as necessary; and
- (5) Establish by rule the procedures for an appeal of an examination failure.

Sec. 6. RCW 18.53.060 and 1991 c 3 s 135 are each amended to read as follows:

From and after January 1, 1940, in order to be eligible for examination for registration, a person shall be a citizen of the United States of America, who shall have a preliminary education of or equal to four years in a state accredited high school and has completed a full attendance course in a regularly chartered school of optometry maintaining a standard which is deemed sufficient and satisfactory by the optometry board, who is a person of good moral character, ~~((who is not afflicted with any contagious or infectious disease.))~~ who has a visual acuity in at least one eye, of a standard known as 20/40 under correction: PROVIDED, That from and after January 1, 1975, in order to be eligible for examination for a license, a person shall have the following qualifications:

- (1) Be a graduate of a state accredited high school or its equivalent;
- (2) Have a diploma or other certificate of completion from an accredited college of optometry or school of optometry, maintaining a standard which is deemed sufficient and satisfactory by the optometry board, conferring its degree of doctor of optometry or its equivalent, maintaining a course of four scholastic years in addition to preprofessional college level studies, and teaching substantially all of the following subjects: General anatomy, anatomy of the eyes, physiology, physics, chemistry, pharmacology, biology, bacteriology, general pathology, ocular pathology, ocular neurology, ocular myology, psychology, physiological optics, optometrical mechanics, clinical optometry, visual field charting and orthoptics, general laws of optics and refraction and use of the ophthalmoscope, retinoscope and other clinical instruments necessary in the practice of optometry; and
- (3) Be of good moral character ~~((+and~~
- (4) ~~Have no contagious or infectious disease)).~~

Such person shall file an application for an examination and license with said board at any time thirty days prior to the time fixed for such examination, or at a later date if approved by the board, and such application must be on

forms approved by the board, and properly attested, and if found to be in accordance with the provisions of this chapter shall entitle the applicant upon payment of the proper fee, to take the examination prescribed by the board. Such examination shall not be out of keeping with the established teachings and adopted textbooks of the recognized schools of optometry, and shall be confined to such subjects and practices as are recognized as essential to the practice of optometry. All candidates without discrimination, who shall successfully pass the prescribed examination, shall be registered by the board and shall, upon payment of the proper fee, be issued a license. ~~((The optometry board, at its discretion, may waive all or a portion of the written examination for any applicant who has satisfactorily passed the examination given by the National Board of Examiners in Optometry.))~~ Any license to practice optometry in this state issued by the secretary, and which shall be in full force and effect at the time of passage of this 1975 amendatory act, shall be continued.

Sec. 7. RCW 18.54.070 and 1991 c 3 s 140 are each amended to read as follows:

The board has the following powers and duties:

(1) ~~((The board shall prepare the necessary lists of examination questions, conduct examinations, either written or oral or partly written and partly oral, and shall certify to the secretary of health all lists, signed by all members conducting the examination, of all applicants for licenses who have successfully passed the examination and a separate list of all applicants for licenses who have failed to pass the examination, together with a copy of all examination questions used, and the written answers to questions on written examinations submitted by each of the applicants.))~~ To develop and administer, or approve, or both, a licensure examination. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

(2) The board shall adopt rules and regulations to promote safety, protection and the welfare of the public, to carry out the purposes of this chapter, to aid the board in the performance of its powers and duties, and to govern the practice of optometry.

Sec. 8. RCW 18.64A.020 and 1977 ex.s. c 101 s 2 are each amended to read as follows:

(1) The board shall adopt, in accordance with chapter 34.05 RCW, rules ~~((and regulations))~~ fixing the classification and qualifications and the educational and training requirements for persons who may be employed as pharmacy assistants or who may be enrolled in any pharmacy assistant training program. Such ~~((regulations))~~ rules shall provide that:

(a) Licensed pharmacists shall supervise the training of pharmacy assistants; and

(b) Training programs shall assure the competence of pharmacy assistants to aid and assist pharmacy operations. Training programs shall consist of instruction and/or practical training.

Such rules may include successful completion of examinations for applicants for pharmacy assistant certificates. If such examination rules are adopted, the board shall prepare or determine the nature of, and supervise the grading of the examinations. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

(2) The board may disapprove or revoke approval of any training program for failure to conform to board rules (~~and regulations~~). In the case of the disapproval or revocation of approval of a training program 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.

Sec. 9. RCW 18.74.023 and 1991 c 12 s 3 and 1991 c 3 s 175 are each reenacted and amended to read as follows:

The board has the following powers and duties:

(1) To develop and administer, or approve, or both, examinations to applicants for a license under this chapter.

(2) To pass upon the qualifications of applicants for a license and to certify to the secretary duly qualified applicants.

(3) To make such rules not inconsistent with the laws of this state as may be deemed necessary or proper to carry out the purposes of this chapter.

(4) To establish and administer requirements for continuing competency, which shall be a prerequisite to renewing a license under this chapter.

(5) To keep an official record of all its proceedings, which record shall be evidence of all proceedings of the board which are set forth therein.

(6) To adopt rules not inconsistent with the laws of this state, when it deems appropriate, in response to questions put to it by professional health associations, physical therapists, and consumers in this state concerning the authority of physical therapists to perform particular acts.

Sec. 10. RCW 18.74.035 and 1991 c 3 s 176 are each amended to read as follows:

All qualified applicants for a license as a physical therapist shall be examined by the board at such time and place as the board may determine. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The examination shall embrace the following subjects: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics; physical therapy, as defined in this chapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of physical therapy as defined in this chapter; and such other subjects as the board may deem useful to test the applicant's fitness to practice physical therapy, but not including the adjustment or manipulation of the spine or use of a thrusting force as mobilization. Examinations shall be held within the state at least once a year, at such time and place as the board shall determine. An applicant who

fails an examination may apply for reexamination upon payment of a reexamination fee determined by the secretary.

Sec. 11. RCW 18.83.070 and 1984 c 279 s 80 are each amended to read as follows:

An applicant for a license as "psychologist" must submit proof to the board that:

- (1) The applicant is of good moral character.
- (2) The applicant holds a doctoral degree from a regionally accredited institution, obtained from an integrated program of graduate study in psychology as defined by rules of the board.
- (3) The applicant has had no fewer than two years of supervised experience, at least one of which shall have been obtained subsequent to the granting of the doctoral degree. The board shall adopt rules defining the circumstances under which supervised experience shall qualify the candidate for licensure.

(4) The applicant has passed the written (~~and~~) or oral examinations, or both, as prescribed by the board.

Any person holding a valid license to practice psychology in the state of Washington on June 7, 1984, shall be considered licensed under this chapter.

Sec. 12. RCW 18.83.072 and 1991 c 3 s 198 are each amended to read as follows:

(1) Examination of applicants shall be held in Olympia, Washington, or at such other place as designated by the secretary, at least annually at such times as the board may determine.

(2) Any applicant shall have the right to discuss with the board his or her performance on the examination.

(3) Any applicant who fails to make a passing grade on the examination may be allowed to retake the examination. Any applicant who fails the examination a second time must obtain special permission from the board to take the examination again.

(4) The reexamination fee shall be the same as the application fee set forth in RCW 18.83.060.

(5) The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

Sec. 13. RCW 18.92.030 and 1993 c 78 s 3 are each amended to read as follows:

The board shall (~~prepare examination questions, conduct examinations, and grade the answers of applicants~~) develop and administer, or approve, or both, a licensure examination in the subjects determined by the board to be essential to the practice of veterinary medicine, surgery, and dentistry. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The board, under chapter 34.05 RCW, may adopt rules necessary to carry out the purposes of this chapter, including the performance of the duties and responsibilities of animal technicians and

veterinary medication clerks. The rules shall be adopted in the interest of good veterinary health care delivery to the consuming public and shall not prevent animal technicians from inoculating an animal. The board also has the power to adopt by rule standards prescribing requirements for veterinary medical facilities and fixing minimum standards of continuing veterinary medical education.

The department is the official office of record.

Sec. 14. RCW 18.92.100 and 1991 c 3 s 243 are each amended to read as follows:

Examinations for license to practice veterinary medicine, surgery and dentistry shall be held at least once each year at such times and places as the secretary may authorize and direct. ~~((Said))~~ The examination~~((, which shall be conducted in the English language))~~ shall be~~((, in whole or in part, in writing))~~ on ~~((the following))~~ subjects~~((:—Veterinary anatomy, surgery, obstetrics, pathology, chemistry, hygiene, veterinary diagnosis, materia medica, therapeutics, parasitology, physiology, sanitary medicine, and such other subjects which))~~ that are ordinarily included in the curricula of veterinary colleges~~((, as the board may prescribe))~~. All examinees shall be tested by written examination, supplemented by such oral interviews and practical demonstrations as the board deems necessary. ~~((The board may accept the examinee's results on the National Board of Veterinary Examiners in lieu of the written portion of the state examination.))~~

Sec. 15. RCW 18.108.030 and 1987 c 443 s 3 are each amended to read as follows:

(1) No person may practice or represent himself or herself as a massage practitioner without first applying for and receiving from the department a license to practice.

(2) A person represents himself or herself as a massage practitioner when the person adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Massage, massage practitioner, massage therapist, massage therapy, therapeutic massage, massage technician, massage technology, massagist, masseur, masseuse, myotherapist or myotherapy, touch therapist, reflexologist, ~~((acupressurist))~~ acupressurist, body therapy or body therapist, or any derivation of those terms that implies a massage technique or method.

Sec. 16. RCW 18.108.050 and 1987 c 443 s 5 are each amended to read as follows:

This chapter does not apply to:

(1) An individual giving massage to members of his or her immediate family;

(2) The practice of a profession by individuals who are licensed, certified, or registered under other laws of this state and who are performing services within their authorized scope of practice;

(3) Massage practiced at the athletic department of any institution maintained by the public funds of the state, or any of its political subdivisions;

(4) Massage practiced at the athletic department of any school or college approved by the department by rule using recognized national professional standards;

(5) Students enrolled in an approved massage school, approved program, or approved apprenticeship program, practicing massage techniques, incidental to the massage school or program and supervised by the approved school or program. Students must identify themselves as a student when performing massage services on members of the public. Students may not be compensated for the massage services they provide.

Sec. 17. RCW 18.108.073 and 1991 c 3 s 258 are each amended to read as follows:

(1) The date and location of the examination shall be established by the secretary. Applicants who demonstrate to the secretary's satisfaction that the following requirements have been met shall be scheduled for the next examination following the filing of the application:

(a) Effective June 1, 1988, successful completion of a course of study in an approved massage program; or

(b) Effective June 1, 1988, successful completion of an apprenticeship program established by the board; and

(c) Be eighteen years of age or older.

In addition, the secretary shall establish a deadline for receipt of completed and approved applications (~~shall be received sixty days before the scheduled examination~~).

(2) The board or its designee shall examine each applicant in a written (~~and practical~~) examination determined most effective on subjects appropriate to the massage scope of practice. The subjects may include anatomy, kinesiology, physiology, pathology, principles of human behavior, massage theory and practice, hydrotherapy, hygiene, first aid, Washington law pertaining to the practice of massage, and such other subjects as the board may deem useful to test applicant's fitness to practice massage therapy. Such examinations shall be limited in purpose to determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) (~~The examination papers, all grading of examinations, and the grading of any practical work.~~) All records of a candidate's performance shall be preserved for a period of not less than one year after the board has made and published decisions thereupon. All examinations shall be conducted by the board under fair and impartial methods as determined by the secretary.

(4) An applicant who fails to make the required grade in the first examination is entitled to take up to two additional examinations upon the payment of a fee for each subsequent examination determined by the secretary as provided in RCW 43.70.250. Upon failure of three examinations, the secretary may invalidate the original application and require such remedial education as is required by the board before admission to future examinations.

(5) The board may approve an examination prepared or administered, or both, by a private testing agency or association of licensing boards for use by an applicant in meeting the licensing requirement.

Sec. 18. RCW 18.30.020 and 1995 c 1 s 3 (Initiative Measure No. 607) are each amended to read as follows:

(1) Before making and fitting a denture, a denturist shall examine the patient's oral cavity.

(a) If the examination gives the denturist reasonable cause to believe that there is an abnormality or disease process that requires medical or dental treatment, the denturist shall immediately refer the patient to a dentist or physician. In such cases, the denturist shall take no further action to manufacture or place a denture until the patient has been examined by a dentist or physician and the dentist or physician gives written clearance that the denture will pose no threat to the patient's health.

(b) If the examination reveals the need for tissue or teeth modification in order to assure proper fit of a full or partial denture, the denturist shall refer the patient to a dentist and assure that the modification has been completed before taking an impression for the completion of the denture.

(2) A denturist who makes or places a denture in a manner not consistent with this section is subject to the sanctions provided in chapter 18.130 RCW, the uniform disciplinary act.

(3) A denturist must successfully complete special training in oral pathology prescribed by the ~~((board))~~ secretary, whether as part of an approved associate degree program or equivalent training, and pass an examination prescribed by the ~~((board))~~ secretary, which may be a part of the examination for licensure to become a licensed denturist.

Sec. 19. RCW 18.30.080 and 1995 c 1 s 9 (Initiative Measure No. 607) are each amended to read as follows:

The secretary shall:

(1) In consultation with the board, determine the qualifications of persons applying for licensure under this chapter;

(2) In consultation with the board, prescribe, administer, and determine the requirements for examinations under this chapter and establish a passing grade for licensure under this chapter;

(3) In consultation with the board, adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter;

(4) In consultation with the board, set all licensure, examination, and renewal fees in accordance with RCW 43.70.250;

(5) Evaluate and designate those schools from which graduation will be accepted as proof of an applicant's completion of course work requirements for licensure;

(6) Act as the disciplining authority under this chapter in accordance with the uniform disciplinary act, chapter 18.130 RCW, which governs unlicensed

practice, the issuance and denial of licenses, and the disciplining of license holders under this chapter;

(7) Issue licenses for the practice of denturism under this chapter;

~~((2))~~ (8) Administer oaths and subpoena witnesses for the purpose of carrying out the activities authorized under this chapter;

~~((3))~~ (9) Establish forms and procedures necessary to administer this chapter;

~~((4))~~ (10) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter and act on behalf of the board and the secretary; and

~~((5))~~ (11) Issue licenses of endorsement for applicants from states ~~((that maintain standards of practice))~~ with substantially equivalent licensing standards to this state.

Sec. 20. RCW 18.30.090 and 1995 c 1 s 10 (Initiative Measure No. 607) are each amended to read as follows:

The secretary shall issue a license to practice denturism to an applicant who submits a completed application, pays the appropriate fees, and meets the following requirements:

(1) A person currently licensed to practice denturism under statutory provisions of another state ~~((or federal enclave that maintains standards of practice))~~ with substantially equivalent licensing standards to this chapter shall be licensed without examination upon providing the department with the following:

(a) Proof of successfully passing a written and clinical examination for denturism in a state that the ~~((board))~~ secretary has determined has substantially equivalent standards as those in this chapter in both the written and clinical examinations; and

(b) An affidavit from the state agency where the person is licensed or certified attesting to the fact of the person's licensure or certification.

(2) A person graduating from a formal denturism program shall be licensed if he or she:

(a) Documents successful completion of formal training with a major course of study in denturism of not less than two years in duration at an educational institution recognized by the ~~((board))~~ secretary; and

(b) Passes a written and clinical examination approved by the ~~((board))~~ secretary.

(3) An applicant who does not otherwise qualify under subsection (1) or (2) of this section shall be licensed within two years of December 8, 1994, if he or she:

(a) Provides to the ~~((board))~~ secretary three affidavits by persons other than family members attesting to the applicant's employment in denture technology for at least five years, or provides documentation of at least four thousand hours of practical work within denture technology;

(b) Provides documentation of successful completion of a training course approved by the ((board)) secretary or completion of an equivalent course approved by the ((board)) secretary; and

(c) Passes a written and clinical examination administered by the ((board)) secretary.

Sec. 21. RCW 18.30.100 and 1995 c 1 s 11 (Initiative Measure No. 607) are each amended to read as follows:

The ((board)) secretary shall administer the examinations for licensing under this chapter, subject to the following requirements:

(1) Examinations shall determine the qualifications, fitness, and ability of the applicant to practice denturism. The test shall include a written examination and a practical demonstration of skills.

(2) Examinations shall be held at least annually.

(3) The first examination shall be conducted not later than July 1, 1995.

(4) The written examination shall cover the following subjects: (a) Head and oral anatomy and physiology; (b) oral pathology; (c) partial denture construction and design; (d) microbiology; (e) clinical dental technology; (f) dental laboratory technology; (g) clinical jurisprudence; (h) asepsis; (i) medical emergencies; and (j) cardiopulmonary resuscitation.

(5) Upon payment of the appropriate fee, an applicant who fails either the written or practical examination may have additional opportunities to take the portion of the examination that he or she failed.

The ((~~board or~~)) secretary may hire trained persons licensed under this chapter to prepare, administer, and grade the examinations or may contract with regional examiners who meet qualifications adopted by the ((board)) secretary.

Sec. 22. RCW 18.30.110 and 1995 c 1 s 12 (Initiative Measure No. 607) are each amended to read as follows:

The department shall charge and collect the fees established by the ((board)) secretary. Fees collected shall be placed in the health professions account under RCW 43.70.320.

Sec. 23. RCW 18.30.130 and 1995 c 1 s 14 (Initiative Measure No. 607) are each amended to read as follows:

The ((board)) secretary shall establish by rule the administrative requirements for renewal of licenses to practice denturism, but shall not increase the licensure requirements provided in this chapter. The ((board)) secretary shall establish a renewal and late renewal penalty in accordance with RCW 43.70.250. Failure to renew shall invalidate the license and all privileges granted by the license. The ((board)) secretary shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures and prerequisites for relicensure.

Sec. 24. RCW 18.30.140 and 1995 c 1 s 15 (Initiative Measure No. 607) are each amended to read as follows:

(1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice denturism in this state without first activating the license.

(2) The inactive renewal fee shall be established by the ~~((board))~~ secretary. Failure to renew an inactive license shall result in cancellation in the same manner as failure to renew an active license results in cancellation.

(3) An inactive license may be placed in an active status upon compliance with rules established by the ~~((board))~~ secretary.

(4) The provisions relating to denial, suspension, and revocation of a license are applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed.

NEW SECTION. Sec. 25. RCW 18.30.070 and 1995 c 1 s 8 (Initiative Measure No. 607) are each repealed.

NEW SECTION. Sec. 26. A new section is added to chapter 18.130 RCW to read as follows:

The secretary of health shall review and coordinate all proposed rules, interpretive statements, policy statements, and declaratory orders, as defined in chapter 34.05 RCW, that are proposed for adoption or issuance by any health profession board or commission vested with rule-making authority identified under RCW 18.130.040(2)(b). The secretary shall review the proposed policy statements and declaratory orders against criteria that include the effect of the proposed rule, statement, or order upon existing health care policies and practice of health professionals. Within thirty days of the receipt of a proposed rule, interpretive statement, policy statement, or declaratory order from the originating board or commission, the secretary shall inform the board or commission of the results of the review, and shall provide any comments or suggestions that the secretary deems appropriate. Emergency rule making is not subject to this review process. The secretary is authorized to adopt rules and procedures for the coordination and review under this section.

NEW SECTION. Sec. 27. Sections 18 through 25 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 Senate April 12, 1995.

Passed the House April 6, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 199

[Senate Bill 5399]

WORKERS' COMPENSATION—REVISED PROCEDURE

AN ACT Relating to refining industrial insurance actions; and amending RCW 51.12.120, 51.24.030, 51.24.050, 51.24.060, 51.24.090, 51.32.050, and 51.52.060.

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

Sec. 1. RCW 51.12.120 and 1977 ex.s. c 350 s 23 are each amended to read as follows:

(1) If a worker, while working outside the territorial limits of this state, suffers an injury on account of which he or she, or his or her beneficiaries, would have been entitled to compensation under this title had such injury occurred within this state, such worker, or his or her beneficiaries, shall be entitled to compensation under this title: **PROVIDED**, That if at the time of such injury:

(a) His or her employment is principally localized in this state; or

(b) He or she is working under a contract of hire made in this state for employment not principally localized in any state; or

(c) He or she is working under a contract of hire made in this state for employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or

(d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of compensation or other recoveries, including settlement proceeds, under the workers' compensation law of another state, territory, province, or foreign nation to a worker or his or her beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title: **PROVIDED**, That claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation or other recoveries, including settlement proceeds, paid or awarded the worker or beneficiary under such other workers' compensation law shall be credited against the compensation due the worker or beneficiary under this title.

(3) If a worker or beneficiary is entitled to compensation under this title by reason of an injury sustained in this state while in the employ of an employer who is domiciled in another state and who has neither opened an account with the department nor qualified as a self-insurer under this title, such an employer or his or her insurance carrier shall file with the director a certificate issued by the agency which administers the workers' compensation law in the state of the employer's domicile, certifying that such employer has secured the payment of compensation under the workers' compensation law of such other state and that with respect to said injury such worker or beneficiary is entitled to the benefits provided under such law. In such event:

(a) The filing of such certificate shall constitute appointment by the employer or his or her insurance carrier of the director as its agent for

acceptance of the service of process in any proceeding brought by any claimant to enforce rights under this title;

(b) The director shall send to such employer or his or her insurance carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the director by the claimant in any proceeding brought to enforce rights under this title;

(c)(i) If such employer is a self-insurer under the workers' compensation law of such other state, such employer shall, upon submission of evidence or security, satisfactory to the director, of his or her ability to meet his or her liability to such claimant under this title, be deemed to be a qualified self-insurer under this title;

(ii) If such employer's liability under the workers' compensation law of such other state is insured, such employer's carrier, as to such claimant only, shall be deemed to be subject to this title: PROVIDED, That unless its contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this title, the insurer's liability for compensation shall not exceed its liability under the workers' compensation law of such other state;

(d) If the total amount for which such employer's insurer is liable under (c)(ii) above is less than the total of the compensation to which such claimant is entitled under this title, the director may require the employer to file security satisfactory to the director to secure the payment of compensation under this title; ~~((and))~~

(e) If such employer has neither qualified as a self-insurer nor secured insurance coverage under the workers' compensation law of another state, such claimant shall be paid compensation by the department; and

(f) Any such employer shall have the same rights and obligations as other employers subject to this title and where he or she has not provided coverage or sufficient coverage to secure the compensation provided by this title to such claimant, the director may impose a penalty payable to the department of a sum not to exceed fifty percent of the cost to the department of any deficiency between the compensation provided by this title and that afforded such claimant by such employer or his or her insurance carrier if any.

(4) As used in this section:

(a) A person's employment is principally localized in this or another state when (i) his or her employer has a place of business in this or such other state and he or she regularly works at or from such place of business, or (ii) if clause (i) foregoing is not applicable, he or she is domiciled in and spends a substantial part of his or her working time in the service of his or her employer in this or such other state;

(b) "Workers' compensation law" includes "occupational disease law" for the purposes of this section.

(5) A worker whose duties require him or her to travel regularly in the service of his or her employer in this and one or more other states may agree in writing with his or her employer that his or her employment is principally

localized in this or another state, and, unless such other state refuses jurisdiction, such agreement shall govern as to any injury occurring after the effective date of the agreement.

(6) The director shall be authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada which administer their workers' compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another, and when any such agreement has been executed and promulgated as a regulation of the department under chapter 34.05 RCW, it shall bind all employers and workers subject to this title and the jurisdiction of this title shall be governed by this regulation.

Sec. 2. RCW 51.24.030 and 1987 c 212 s 1701 are each amended to read as follows:

(1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title, the injured worker or beneficiary may elect to seek damages from the third person.

(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed. The department or self-insurer may file a notice of statutory interest in recovery. When such notice has been filed by the department or self-insurer, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department or self-insurer. The department or self-insurer may then intervene as a party in the action to protect its statutory interest in recovery.

(3) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

(4) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker.

(5) For the purposes of this chapter, "recovery" includes all damages except loss of consortium.

Sec. 3. RCW 51.24.050 and 1984 c 218 s 4 are each amended to read as follows:

(1) An election not to proceed against the third person operates as an assignment of the cause of action to the department or self-insurer, which may prosecute or compromise the action in its discretion in the name of the injured worker, beneficiary or legal representative.

(2) If an injury to a worker results in the worker's death, the department or self-insurer to which the cause of action has been assigned may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

(3) If a beneficiary is a minor child, an election not to proceed against a third person on such beneficiary's cause of action may be exercised by the beneficiary's legal custodian or guardian.

(4) Any recovery made by the department or self-insurer shall be distributed as follows:

(a) The department or self-insurer shall be paid the expenses incurred in making the recovery including reasonable costs of legal services;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the recovery made, which shall not be subject to subsection (5) of this section: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the compensation and benefits paid to or on behalf of the injured worker or beneficiary by the department and/or self-insurer; and

(d) The injured worker or beneficiary shall be paid any remaining balance.

(5) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

~~(6) ((In the case of an employer not qualifying as a self-insurer, the department shall make a retroactive adjustment to such employer's experience rating in which the third party claim has been included to reflect that portion of the award or settlement which is reimbursed for compensation and benefits paid and, if the claim is open at the time of recovery, applied against further compensation or benefits to which the injured worker or beneficiary may be entitled.~~

(7)) When the cause of action has been assigned to the self-insurer and compensation and benefits have been paid and/or are payable from state funds for the same injury:

(a) The prosecution of such cause of action shall also be for the benefit of the department to the extent of compensation and benefits paid and payable from state funds;

(b) Any compromise or settlement of such cause of action which results in less than the entitlement under this title is void unless made with the written approval of the department;

(c) The department shall be reimbursed for compensation and benefits paid from state funds;

(d) The department shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the self-insurer in obtaining the award or settlement; and

(e) Any remaining balance under subsection (4)(d) of this section shall be applied, under subsection (5) of this section, to reduce the obligations of the department and self-insurer to pay further compensation and benefits in proportion to which the obligations of each bear to the remaining entitlement of the worker or beneficiary.

Sec. 4. RCW 51.24.060 and 1993 c 496 s 2 are each amended to read as follows:

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: PROVIDED, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: PROVIDED, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf

of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

~~(4) ((In the case of an employer not qualifying as a self-insurer, the department shall make a retroactive adjustment to such employer's experience rating in which the third party claim has been included to reflect that portion of the award or settlement which is reimbursed for compensation and benefits paid and, if the claim is open at the time of recovery, applied against further compensation and benefits to which the injured worker or beneficiary may be entitled.~~

~~(5))~~ In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

~~((6))~~ (5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

~~((7))~~ (6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by registered or certified mail, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case

docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

~~((8))~~ (7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy~~((7))~~; by certified mail, return receipt requested; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

Sec. 5. RCW 51.24.090 and 1984 c 218 s 7 are each amended to read as follows:

(1) Any compromise or settlement of the third party cause of action by the injured worker or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department or self-insurer: PROVIDED, That for the purposes of this chapter, "entitlement" means benefits and compensation paid and ~~((payable))~~ estimated by the department to be paid in the future.

(2) If a compromise or settlement is void because of subsection (1) of this section, the department or self-insurer may petition the court in which the action was filed for an order assigning the cause of action to the department or self-insurer. If an action has not been filed, the department or self-insurer may proceed as provided in chapter 7.24 RCW.

Sec. 6. RCW 51.32.050 and 1993 c 521 s 1 are each amended to read as follows:

(1) Where death results from the injury the expenses of burial not to exceed two ~~((thousand dollars))~~ hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker but not less than one hundred eighty-five dollars;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker but not less than two hundred twenty-two dollars;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker but not less than two hundred fifty-three dollars;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker but not less than two hundred seventy-six dollars;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker but not less than two hundred ninety-nine dollars; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker but not less than three hundred twenty-two dollars.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal

custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(e) In addition to the monthly payments provided for in subsection (2) (a) through ((2))(c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid ((the)) a sum ((of one thousand six hundred dollars)) equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior

to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067.

Sec. 7. RCW 51.52.060 and 1986 c 200 s 11 are each amended to read as follows:

Except as otherwise specifically provided in this section, any worker, beneficiary, employer, health services provider, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which such copy of such order, decision, or award was communicated to such person, a notice of appeal to the board: PROVIDED, That a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, solely for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she

appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which such copy of such order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board. Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties thereto of the receipt thereof and shall forward a copy of said notice of appeal to such other interested parties. Within twenty days of the receipt of such notice of the board, the worker or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken: PROVIDED, That nothing contained in this section shall be deemed to change, alter or modify the practice or procedure of the department for the payment of awards pending appeal: AND PROVIDED, That failure to file notice of appeal with both the board and the department shall not be ground for denying the appeal if the notice of appeal is filed with either the board or the department: AND PROVIDED, That, if within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department shall direct the submission of further evidence or the investigation of any further fact, the time for filing such notice of appeal shall not commence to run until such person shall have been advised in writing of the final decision of the department in the matter: PROVIDED, FURTHER, That in the event the department shall direct the submission of further evidence or the investigation of any further fact, as above provided, the department shall render a final order, decision, or award within ninety days from the date such further submission of evidence or investigation of further fact is ordered which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days: PROVIDED, FURTHER, That the department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may modify, reverse or change any order, decision, or award, or may hold any such order, decision, or award in abeyance for a period of ninety days which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days pending further investigation in light of the allegations of the notice of appeal, and the board shall thereupon deny the appeal, without prejudice to the appellant's right to appeal from any subsequent determinative order issued by the department.

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 17, 1995.

Passed the House April 6, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 200

[Substitute Senate Bill 5403]

WASHINGTON STATE HORSE PARK

AN ACT Relating to the Washington state horse park; adding a new chapter to Title 67 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) Horses are part of a large, highly diverse, and vital industry which provides significant economic, employment, recreational, and educational contributions to residents of and visitors to the state of Washington;

(2) Currently there is no adequate facility in the Pacific Northwest with the acreage, services, and capacity to host large regional horse shows, national championships, or Olympics-quality events to showcase and promote this important Washington industry;

(3) Establishing a first-class horse park facility in Washington would meet important needs of the state's horse industry, attract investment, enhance recreational opportunities, and bring new exhibitors and tourists to the state from throughout the region and beyond; and

(4) A unique opportunity exists to form a partnership between state, county, and private interests to create a major horse park facility that will provide public recreational opportunities and state-wide economic and employment benefits.

It is the purpose of this legislation to create the framework for such a partnership to facilitate development of the Washington state horse park. It is further the intent of the legislature that the state horse park shall be developed in stages, based on factors such as the availability of funds, equipment, and other materials donated by private sources; the availability and willingness of volunteers to work on park development; and the availability of revenues generated by the state horse park as it is developed and utilized.

NEW SECTION. Sec. 2. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Authority" means the Washington state horse park authority authorized to be created in section 4 of this act.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Horses" includes all domesticated members of the taxonomic family Equidae, including but not limited to horses, donkeys, and mules.

(4) "State horse park" means the Washington state horse park established in section 3 of this act.

NEW SECTION. Sec. 3. (1) The Washington state horse park is hereby established, to be located at a site approved by the commission. In approving a site for the state horse park, the commission shall consider areas with large blocks of land suitable for park development, the distance to various population centers in the state, the ease of transportation to the site for large vehicles

traveling along either a north-south or an east-west corridor, and other factors deemed important by the commission.

(2) Ownership of land for the state horse park shall be as follows:

(a) The commission is vested with and shall retain ownership of land provided by the state for the state horse park. Any lands acquired by the commission after the effective date of this act for the state horse park shall be purchased under chapter 43.98A RCW. The legislature encourages the commission to provide a long-term lease of the selected property to the Washington state horse park authority at a minimal charge. The lease shall contain provisions ensuring public access to and use of the horse park facilities, and generally maximizing public recreation opportunities at the horse park, provided that the facility remains available primarily for horse-related activities.

(b) Land provided for the state horse park by the county in which the park is located shall remain in the ownership of that county unless the county determines otherwise. The legislature encourages the county to provide a long-term lease of selected property to the Washington state horse park authority at a minimal charge.

(c) If the authority acquires additional lands through donations, grants, or other means, or with funds generated from the operation of the state horse park, the authority shall retain ownership of those lands. The authority shall also retain ownership of horse park site improvements paid for by or through donations or gifts to the authority.

(3) Development, promotion, operation, management, and maintenance of the state horse park is the responsibility of the authority created in section 4 of this act.

NEW SECTION. Sec. 4. (1) A nonprofit corporation may be formed under the nonprofit corporation provisions of chapter 24.03 RCW to carry out the purposes of this chapter. Except as provided in section 5 of this act, the corporation shall have all the powers and be subject to the same restrictions as are permitted or prescribed to nonprofit corporations and shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The nonprofit corporation shall be known as the Washington state horse park authority. The articles of incorporation shall provide that it is the responsibility of the authority to develop, promote, operate, manage, and maintain the Washington state horse park. The articles of incorporation shall provide for appointment of directors and other conduct of business consistent with the requirements of this chapter.

(2)(a) The articles of incorporation shall provide for a seven-member board of directors for the authority, all appointed by the governor. Board members shall serve three-year terms, except that two of the original appointees shall serve one-year terms, and two of the original appointees shall serve two-year terms. A board member may serve consecutive terms.

(b) The articles of incorporation shall provide that the governor appoint board members as follows:

(i) One board member shall represent the interests of the commission. In making this appointment, the governor shall solicit recommendations from the commission;

(ii) One board member shall represent the interests of the county in which the park is located. In making this appointment, the governor shall solicit recommendations from the county legislative authority; and

(iii) Five board members shall represent the geographic and sports discipline diversity of equestrian interests in the state, and at least one of these members shall have business experience relevant to the organization of horse shows or operation of a horse show facility. In making these appointments, the governor shall solicit recommendations from a variety of active horse-related organizations in the state.

(3) The articles of incorporation shall include a policy that provides for the preferential use of a specific area of the horse park facilities at nominal cost for horse groups associated with youth groups and the disabled.

(4) The governor shall make appointments to fill board vacancies for positions authorized under subsection (2) of this section, upon additional solicitation of recommendations from the board of directors.

(5) The board of directors shall perform their duties in the best interests of the authority, consistent with the standards applicable to directors of nonprofit corporations under RCW 24.03.127.

NEW SECTION. Sec. 5. To meet its responsibility for developing, promoting, operating, managing, and maintaining the state horse park, the authority is empowered to do the following:

(1) Exercise the general powers authorized for any nonprofit corporation as specified in RCW 24.03.035. All debts of the authority shall be in the name of the authority and shall not be debts of the state of Washington for which the state or any state agency shall have any obligation to pay; and the authority may not issue bonds. Neither the full faith and credit of the state nor the state's taxing power is pledged for any indebtedness of the authority;

(2) Employ and discharge at its discretion employees, agents, advisors, and other personnel;

(3) Apply for or solicit, accept, administer, and dispose of grants, gifts, and bequests of money, services, securities, real estate, or other property. However, if the authority accepts a donation designated for a specific purpose, the authority shall use the donation for the designated purpose;

(4) Establish, revise, collect, manage, and expend such fees and charges at the state horse park as the authority deems necessary to accomplish its responsibilities;

(5) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority and the state horse park;

(6) Authorize use of the state horse park facilities by the general public and by and for compatible nonequestrian events as the authority deems reasonable,

so long as the primacy of the center for horse-related purposes is not compromised;

(7) Insure its obligations and potential liability;

(8) Enter into cooperative agreements with and provide for private nonprofit groups to use the state horse park facilities and property to raise money to contribute gifts, grants, and support to the authority for the purposes of this chapter;

(9) Grant concessions or leases at the state horse park upon such terms and conditions as the authority deems appropriate, but in no event shall the term of a concession or lease exceed twenty-five years. Concessions and leases shall be consistent with the purposes of this chapter and may be renegotiated at least every five years; and

(10) Generally undertake any and all lawful acts necessary or appropriate to carry out the purposes for which the authority and the state horse park are created.

NEW SECTION. Sec. 6. (1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.

(2) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and the disabled at nominal cost.

NEW SECTION. Sec. 7. Sections 2 through 6 of this act shall constitute a new chapter in Title 67 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 17, 1995.

Passed the House April 6, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 201

[Senate Bill 5755]

**USE TAX—EXEMPTION FOR PROPERTY DONATED TO NONPROFIT
CHARITABLE ORGANIZATION**

AN ACT Relating to the application of use tax on donated property to nonprofit charitable organizations; 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 82.12 RCW to read as follows:

This chapter shall not apply to the use by a nonprofit charitable organization or state or local governmental entity of any item of tangible personal property that has been donated to the nonprofit charitable organization or state or local governmental entity.

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 March 9, 1995.

Passed the House April 13, 1995.

Approved by the Governor May 1, 1995.

Filed in Office of Secretary of State May 1, 1995.

CHAPTER 202

[Senate Bill 5848]

TULALIP TRIBES—RETROCESSION OF CRIMINAL JURISDICTION

AN ACT Relating to retrocession of criminal jurisdiction; and amending RCW 37.12.100, 37.12.110, and 37.12.120.

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

Sec. 1. RCW 37.12.100 and 1994 c 12 s 1 are each amended to read as follows:

It is the intent of the legislature to authorize a procedure for the retrocession, to the Quileute Tribe, Chehalis Tribe, Swinomish Tribe, Skokomish Tribe, Tulalip Tribes, and the Colville Confederated Tribes of Washington and the United States, of criminal jurisdiction over Indians for acts occurring on tribal lands or allotted lands within the Quileute, Chehalis, Swinomish, Skokomish, Tulalip, or Colville Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States.

RCW 37.12.100 through 37.12.140 in no way expand the Quileute, Chehalis, Swinomish, Skokomish, Tulalip, or Colville tribe's criminal or civil jurisdiction, if any, over non-Indians or fee title property. RCW 37.12.100 through 37.12.140 shall have no effect whatsoever on water rights, hunting and fishing rights, the established pattern of civil jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Tulalip, or Colville Indian reservation, the

established pattern of regulatory jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Tulalip, or Colville Indian reservation, taxation, or any other matter not specifically included within the terms of RCW 37.12.100 through 37.12.140.

Sec. 2. RCW 37.12.110 and 1994 c 12 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the following definitions apply throughout RCW 37.12.100 through 37.12.140:

(1) "Colville reservation" or "Colville Indian reservation," "Quileute reservation" or "Quileute Indian reservation," "Chehalis reservation" or "Chehalis Indian reservation," "Swinomish reservation" or "Swinomish Indian reservation," ~~((or))~~ "Skokomish reservation" or "Skokomish Indian reservation," or "Tulalip reservation" or "Tulalip Indian reservation" means all tribal lands or allotted lands lying within the reservation of the named tribe and held in trust by the United States or subject to a restriction against alienation imposed by the United States, but does not include those lands which lie north of the present Colville Indian reservation which were included in original reservation boundaries created in 1872 and which are referred to as the "diminished reservation."

(2) "Indian tribe," "tribe," "Colville tribes," or "Quileute, Chehalis, Swinomish, ~~((or))~~ Skokomish, or Tulalip tribe" means the confederated tribes of the Colville reservation or the tribe of the Quileute, Chehalis, Swinomish, ~~((or))~~ Skokomish, or Tulalip reservation.

(3) "Tribal court" means the trial and appellate courts of the Colville tribes or the Quileute, Chehalis, Swinomish, ~~((or))~~ Skokomish, or Tulalip tribe.

Sec. 3. RCW 37.12.120 and 1994 c 12 s 3 are each amended to read as follows:

Whenever the governor receives from the confederated tribes of the Colville reservation or the Quileute, Chehalis, Swinomish, ~~((or))~~ Skokomish, or Tulalip tribe a resolution expressing their desire for the retrocession by the state of all or any measure of the criminal jurisdiction acquired by the state pursuant to RCW 37.12.021 over lands of that tribe's reservation, the governor may, within ninety days, issue a proclamation retroceding to the United States the criminal jurisdiction previously acquired by the state over such reservation. However, the state of Washington shall retain jurisdiction as provided in RCW 37.12.010. The proclamation of retrocession shall not become effective until it is accepted by an officer of the United States government in accordance with 25 U.S.C. Sec. 1323 (82 Stat. 78, 79) and in accordance with procedures established by the United States for acceptance of such retrocession of jurisdiction. The Colville tribes and the Quileute, Chehalis, Swinomish, ~~((and))~~ Skokomish, and Tulalip tribes shall not exercise criminal or civil jurisdiction over non-Indians.

Passed the Senate March 10, 1995.
 Passed the House April 12, 1995.
 Approved by the Governor May 1, 1995.
 Filed in Office of Secretary of State May 1, 1995.

CHAPTER 203

[Senate Bill 5895]

SEASHORE CONSERVATION AREA—EXCHANGE OF STATE PARK LANDS

AN ACT Relating to permitting the exchange of state park lands within the Seashore Conservation Area; amending RCW 43.51.685; and declaring an emergency.

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

Sec. 1. RCW 43.51.685 and 1988 c 75 s 18 are each amended to read as follows:

Lands within the Seashore Conservation Area shall not be sold, leased, or otherwise disposed of, except as herein provided. The commission may, under authority granted in RCW 43.51.210 and 43.51.215, exchange state park lands in the Seashore Conservation Area for lands of equal value to be managed by the commission consistent with this chapter. Only state park lands lying east of the Seashore Conservation Line, as it is located at the time of exchange, may be so exchanged. The department of natural resources may lease the lands within the Washington State Seashore Conservation Area as well as the accreted lands along the ocean in state ownership for the exploration and production of oil and gas: PROVIDED, That oil drilling rigs and equipment will not be placed on the seashore conservation area or state-owned accreted lands.

Sale of sand from accretions shall be made to supply the needs of cranberry growers for cranberry bogs in the vicinity and shall not be prohibited if found by the commission to be reasonable, and not generally harmful or destructive to the character of the land: PROVIDED, That the commission may grant leases and permits for the removal of sands for construction purposes from any lands within the Seashore Conservation Area if found by the commission to be reasonable and not generally harmful or destructive to the character of the land: PROVIDED FURTHER; That net income from such leases shall be deposited in the general fund.

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 March 9, 1995.
 Passed the House April 12, 1995.
 Approved by the Governor May 1, 1995.
 Filed in Office of Secretary of State May 1, 1995.

CHAPTER 204

[Substitute House Bill 1035]

DEATH INVESTIGATIONS—DEPARTMENT OF SOCIAL AND HEALTH SERVICES RESIDENTIAL FACILITIES

AN ACT Relating to death investigations in residential facilities operated or under control of the department of social and health services; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The department of health, in conjunction with the department of social and health services, local health jurisdictions, coroners, medical examiners, and other appropriate entities, shall develop a consistent process for review of all unexpected deaths of minors who are in the care of or receiving those services described in chapter 74.13 RCW from the department of social and health services. For purposes of this section an "unexpected death of a minor" is a death not resulting from a diagnosed terminal illness or other debilitating or deteriorating illness or condition where death is anticipated.

(2) The department of health shall report its findings and recommendations to the legislature by November 1, 1995.

Passed the House April 18, 1995.

Passed the Senate April 6, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 205

[Substitute House Bill 1053]

WOOD BURNING DEVICES

AN ACT Relating to wood burning devices; and amending RCW 70.94.473, 70.94.477, 70.94.457, and 70.94.460.

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

Sec. 1. RCW 70.94.473 and 1991 c 199 s 504 are each amended to read as follows:

(1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by

the department or any authority, for that area. A first stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of seventy-five micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average; and

(c) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of one hundred five micrograms per cubic meter measured on a twenty-four hour average.

~~(2) ((If a local air authority exercises the limitation on solid fuel burning devices specified under RCW 70.94.477(2), a single stage of impaired air quality applies in the geographical area defined by the authority in accordance with RCW 70.94.477(2) and is reached when particulates ten microns and smaller in diameter are at an ambient level of ninety micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average.~~

~~If this single stage of impaired air quality is reached, no person in a residence or commercial establishment that has an adequate source of heat without burning wood shall burn wood in any solid fuel burning device, including those which meet the standards set forth in RCW 70.94.457.~~

~~(3))~~ Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by ~~((this act))~~ chapter 199, Laws of 1991.

Sec. 2. RCW 70.94.477 and 1990 c 128 s 3 are each amended to read as follows:

(1) Unless allowed by rule, under chapter 34.05 RCW, a person shall not cause or allow any of the following materials to be burned in any residential solid fuel burning device:

- (a) Garbage;
- (b) Treated wood;
- (c) Plastics;
- (d) Rubber products;
- (e) Animals;
- (f) Asphaltic products;
- (g) Waste petroleum products;
- (h) Paints; or

(i) Any substance, other than properly seasoned fuel wood, which normally emits dense smoke or obnoxious odors.

(2) ((On or after July 1, 1995,)) For the sole purpose of a contingency measure to meet the requirements of section 172(c)(9) of the federal clean air act, a local authority or the department may ((geographically limit)) prohibit the use of solid fuel burning devices, except fireplaces as defined in RCW 70.94.453(3), wood stoves meeting the standards set forth in RCW 70.94.457 or pellet stoves either certified or issued an exemption ((certificate)) by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, if the United States environmental protection agency, in consultation with the department and the local authority makes written findings that:

(a) The area has failed to make reasonable further progress or attain or maintain a national ambient air quality standard; and

(b) Emissions from solid fuel burning devices from a particular geographic area are a contributing factor to such failure to make reasonable further progress or attain or maintain a national ambient air quality standard.

A prohibition issued by a local authority or the department under this subsection shall not apply to a person in a residence or commercial establishment that does not have an adequate source of heat without burning wood. ((An authority shall allow an exemption from this subsection for low income persons who reside in a geographical area affected by this subsection. In the exercise of this limitation, a local authority shall consider the following factors:

(a) The contribution of solid fuel burning devices that do not meet the standards set forth in RCW 70.94.457 to nonattainment of national ambient air quality standards;

(b) The population density of geographical areas within the local authority's jurisdiction giving greater consideration to urbanized areas; and

(c) The public health effects of use of solid fuel burning devices which do not meet the standards set forth in RCW 70.94.457.))

Sec. 3. RCW 70.94.457 and 1991 c 199 s 501 are each amended to read as follows:

The department of ecology shall establish by rule under chapter 34.05 RCW:

(1) State-wide emission performance standards for new solid fuel burning devices. Notwithstanding any other provision of this chapter which allows an authority to adopt more stringent emission standards, no authority shall adopt any emission standard for new solid fuel burning devices other than the state-wide standard adopted by the department under this section.

(a) After January 1, 1995, no solid fuel burning device shall be offered for sale in this state to residents of this state that does not meet the following particulate air contaminant emission standards under the test methodology of the United States environmental protection agency in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the United States environmental protection agency subsequent to such date: (i) Two and one-half grams per hour for catalytic wood stoves; and (ii) four and one-half grams per

hour for all other solid fuel burning devices. For purposes of this subsection, "equivalent" shall mean the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by the department that compares the difference between the emission test methodology established by the United States environmental protection agency prior to May 15, 1991, with the test methodology adopted subsequently by the agency. Subsection (a) of this subsection does not apply to fireplaces.

(b) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule. Prior to January 1, 1997, the state building code council shall establish by rule a methodology for the testing of factory-built fireplaces. The methodology shall be designed to achieve a particulate air emission standard equivalent to the 1990 United States environmental protection agency standard for wood stoves. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers.

(c) Prior to January 1, 1997, the state building code council shall establish by rule design standards for the construction of new masonry fireplaces in Washington state. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers. It shall be the goal of the council to develop design standards that generally achieve reductions in particulate air contaminant emissions commensurate with the reductions being achieved by factory-built fireplaces at the time the standard is established.

(d) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by this act.

(e) Subsection (1)(a) of this section shall not apply to fireplaces.

(f) Notwithstanding (a) of this subsection, the department is authorized to adopt, by rule, emission standards adopted by the United States environmental protection agency for new wood stoves sold at retail. For solid fuel burning devices for which the United States environmental protection agency has not established emission standards, the department may exempt or establish, by rule, state-wide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves and fireplaces regulated under this subsection.

(2) A program to:

(a) Determine whether a new solid fuel burning device complies with the state-wide emission performance standards established in subsection (1) of this section; and

(b) Approve the sale of devices that comply with the state-wide emission performance standards.

Sec. 4. RCW 70.94.460 and 1987 c 405 s 7 are each amended to read as follows:

After July 1, 1988, no person shall sell, offer to sell, or knowingly advertise to sell a new wood stove in this state to a resident of this state unless the wood stove has been approved by the department under the program established under RCW 70.94.457.

Passed the House April 18, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 206

[Engrossed Substitute House Bill 1080]

OUTDOOR BURNING PERMITS—EXEMPTION OF CERTAIN NONURBAN AREAS

AN ACT Relating to exempting certain nonurban areas from outdoor burning permit requirements; and amending RCW 70.94.745.

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

Sec. 1. RCW 70.94.745 and 1991 c 199 s 401 are each amended to read as follows:

(1) It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, fire districts, and local air pollution control authorities to establish, through regulations, ordinances, or policy, a limited burning permit program (~~for the people of this state, consisting of a one permit system, until such time as~~).

(2) The permit program shall apply to residential and land clearing burning in the following areas:

(a) In the nonurban areas of any county with an unincorporated population of greater than fifty thousand; and

(b) In any city and urban growth area that is not otherwise prohibited from burning pursuant to RCW 70.94.743.

(3) The permit program shall apply only to land clearing burning in the nonurban areas of any county with an unincorporated population of less than fifty thousand.

(4) The permit program may be limited to a general permit by rule, or by verbal, written, or electronic approval by the permitting entity.

(5) Notwithstanding any other provision of this section, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of

disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.714. This subsection (5) shall only apply within counties with a population less than 250,000.

(6) Burning shall be prohibited in an area when an alternate technology or method((s)) of disposing of the organic refuse ((have been developed that are)) is available, reasonably economical, and less harmful to the environment. It is the policy of this state to foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse.

(7) Incidental agricultural burning must be allowed without applying for any permit and without the payment of any fee if:

(a) The burning is incidental to commercial agricultural activities;

(b) The operator notifies the local fire department within the area where the burning is to be conducted;

(c) The burning does not occur during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715; and

(d) Only the following items are burned:

(i) Orchard prunings;

(ii) Organic debris along fence lines or irrigation or drainage ditches; or

(iii) Organic debris blown by wind.

(8) As used in this section, "nonurban areas" are unincorporated areas within a county that is not designated as an urban growth area under chapter 36.70A RCW.

(9) Nothing in this section shall require fire districts to enforce air quality requirements related to outdoor burning, unless the fire district enters into an agreement with the department of ecology, department of natural resources, a local air pollution control authority, or other appropriate entity to provide such enforcement.

Passed the House April 19, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 207

[Second Substitute House Bill 1162]

HAZARDOUS WASTE GENERATION FEES COLLECTION

AN ACT Relating to the collection of hazardous waste generation fees; amending RCW 70.95E.010, 70.95E.050, and 70.95E.090; reenacting and amending RCW 70.95E.020; and declaring an emergency.

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

Sec. 1. RCW 70.95E.010 and 1994 c 136 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) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

(2) "Department" means the department of ecology.

(3) "EPA/state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(4) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(5) "Fee" means the annual fees imposed under this chapter.

(6) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes but for the purposes of this chapter excludes all radioactive wastes or substances composed of both radioactive and hazardous components.

(8) (~~"Known generators" means persons that have notified the department and have received an EPA/state identification number.~~) "Hazardous waste generator" means all persons whose primary business activities are identified by the department to generate any quantity of hazardous waste in the calendar year for which the fee is imposed.

(9) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(10) (~~"Potential generators" means all persons whose primary business activities are identified by the department to be likely to generate any quantity of hazardous wastes.~~)

~~(11))~~ "Price deflator" means the United States department of commerce bureau of economic analysis, "Implicit Price Deflator for Gross National Product" for "Government Purchases of Goods and Services," for "State and Local Government."

~~((12))~~ (11) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

~~((12))~~ (12) "Waste generation site" means any geographical area that has been assigned an EPA/state identification number.

Sec. 2. RCW 70.95E.020 and 1994 sp.s. c 2 s 3 and 1994 c 136 s 2 are each reenacted and amended to read as follows:

A fee is imposed for the privilege of generating ~~((or potentially generating))~~ hazardous waste in the state. The annual amount of the fee shall be thirty-five dollars upon every ~~((known generator or potential))~~ hazardous waste generator doing business in Washington in the current calendar year or any part thereof. This fee shall be collected by the department ~~((of revenue))~~ or its designee. A ~~((potential))~~ hazardous waste generator shall be exempt from the fee imposed under this section if the value of products, gross proceeds of sales, or gross income of the business, from all business activities of the ~~((potential))~~ hazardous waste generator, is less than twelve thousand dollars in the current calendar year. The department shall, subject to appropriation, use the funds collected from the fees assessed in this subsection to support the activities of the office of waste reduction as specified in RCW 70.95C.030. The fee imposed pursuant to this section is due annually by July 1 of the year following the calendar year for which the fee is imposed ~~((, except the fee scheduled to be imposed for calendar year 1993 shall be imposed on known generators only))~~.

Sec. 3. RCW 70.95E.050 and 1994 c 136 s 4 are each amended to read as follows:

In administration of this chapter for the enforcement and collection of the fees due and owing under ~~((this chapter))~~ RCW 70.95E.020 and 70.95E.030, the department ~~((of revenue is authorized to))~~ may apply ~~((the provisions of chapter 82.32 RCW, except that the provisions of RCW 82.32.045 shall not apply))~~ RCW 43.17.240.

Sec. 4. RCW 70.95E.090 and 1990 c 114 s 19 are each amended to read as follows:

The department may use funds in the hazardous waste assistance account to provide technical assistance and compliance education assistance to hazardous substance users and waste generators, to provide grants to local governments, and for administration of this chapter. ~~((The department of revenue shall be appropriated a percentage amount of the total fees collected, not to exceed two percent of the total fees collected, for administration and collection expenses incurred by the department of revenue.))~~

Technical assistance may include the activities authorized under chapter 70.95C RCW and RCW 70.105.170 to encourage hazardous waste reduction and hazardous use reduction and the assistance provided for by RCW 70.105.100(2).

Compliance education may include the activities authorized under RCW 70.105.100(2) to train local agency officials and to inform hazardous substance users and hazardous waste generators and owners and operators of hazardous waste management facilities of the requirements of chapter 70.105 RCW and related federal laws and regulations. To the extent practicable, the department shall contract with private businesses to provide compliance education.

Grants to local governments shall be used for small quantity generator technical assistance and compliance education components of their moderate risk waste plans as required by RCW 70.105.220.

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 April 18, 1995.
Passed the Senate April 10, 1995.
Approved by the Governor May 3, 1995.
Filed in Office of Secretary of State May 3, 1995.

CHAPTER 208

[House Bill 1224]

WAIVERS OF EDUCATIONAL PROVISIONS FOR DISTRICTS

AN ACT Relating to educational waivers; and adding a new section to chapter 28A.630 RCW. Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28A.630 RCW to read as follows:

(1) The state board of education, where appropriate, or the superintendent of public instruction, where appropriate, may grant waivers to districts from the provisions of statutes or rules relating to: The length of the school year; student-to-teacher ratios; and other administrative rules that in the opinion of the state board of education or the opinion of the superintendent of public instruction may need to be waived in order for a district to implement a plan for restructuring its educational program or the educational program of individual schools within the district.

(2) School districts may use the application process in RCW 28A.305.140 or 28A.300.138 to apply for the waivers under subsection (1) of this section.

(3) The joint select committee on education restructuring shall study which waivers of state laws or rules are necessary for school districts to implement education restructuring. The committee shall study whether the waivers are used to implement specific essential academic learning requirements and student learning goals. The committee shall study the availability of waivers under the schools for the twenty-first century program created by chapter 525, Laws of 1987, and the use of those waivers by schools participating in that program. The committee shall also study the use of waivers authorized under RCW 28A.305.140. The committee shall report its findings to the legislature by December 1, 1997.

Passed the House April 18, 1995.
Passed the Senate April 4, 1995.
Approved by the Governor May 3, 1995.
Filed in Office of Secretary of State May 3, 1995.

CHAPTER 209

[House Bill 1249]

TIMELINES FOR ESSENTIAL ACADEMIC LEARNING
REQUIREMENT ASSESSMENTS—EXTENSION

AN ACT Relating to changing timelines for essential academic learning requirement assessments; amending RCW 28A.630.885; amending 1992 c 141 s 203 (uncodified); and providing an expiration date.

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

Sec. 1. RCW 28A.630.885 and 1994 c 245 s 13 are each amended to read as follows:

(1) The Washington commission on student learning is hereby established. The primary purposes of the commission are to identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals 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 five members appointed no later than 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 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.

(2) The commission shall establish advisory committees. Membership of the 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.

(3) The commission, with the assistance of the advisory committees, shall:

(a) Develop essential academic learning requirements based on the student learning goals 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)(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, 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 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 have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(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))~~ 1998-99 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) 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 commission shall make recommendations to the state board of education 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) 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 academic assessment system;

(g) Develop recommendations for consideration by the higher education coordinating board for adopting college and university entrance requirements for public school students that are consistent with the essential academic learning requirements and the certificate of mastery;

(h) By ~~((December 1, 1998))~~ June 30, 1999, 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 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;

(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

(j) Make recommendations to the legislature and take other actions necessary or desirable to help students meet the student learning goals.

(4) The commission shall coordinate its activities with the state board of education and the office of the superintendent of public instruction.

(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.

(6) The commission shall select an entity to provide staff support and the office of the superintendent of public instruction shall provide administrative oversight and be the fiscal agent for the commission. The commission may direct the office of 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.

(7) Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

Sec. 2. 1992 c 141 s 203 (uncodified) is amended to read as follows:
Section 202 of this act shall expire (~~September 1, 1998~~) June 30, 1999.

NEW SECTION. **Sec. 3.** Section 1 of this act shall expire June 30, 1999.

Passed the House April 18, 1995.
Passed the Senate April 7, 1995.
Approved by the Governor May 3, 1995.
Filed in Office of Secretary of State May 3, 1995.

CHAPTER 210

[House Bill 1282]

ANIMALS POSING A DANGER TO LIVESTOCK OR CROPS—AUTHORITY TO TRAP OR KILL INCREASED

AN ACT Relating to certain animals posing a danger to livestock or crops; and amending RCW 77.12.265.

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

Sec. 1. RCW 77.12.265 and 1987 c 506 s 35 are each amended to read as follows:

The owner, the owner's immediate family member, the owner's documented employee, or tenant of real property may trap or kill on that property, without the licenses required under RCW 77.32.010, wild animals or wild birds, other than an endangered species, that ~~((is))~~ are damaging crops, domestic animals, fowl, or other property. Except in emergency situations, deer, elk, and protected wildlife shall not be killed without a permit issued and conditioned by the director. The director may delegate this authority.

For the purposes of this section, "emergency" means an unforeseen circumstance beyond the control of the landowner or tenant that presents a real and immediate threat to crops, domestic animals, fowl, or other property.

Alternatively, when sufficient time for the issuance of a permit by the director is not available, verbal permission may be given by the appropriate department regional administrator to owners or tenants of real property to trap or kill on that property any deer, elk, or protected wildlife which is damaging crops, domestic animals, fowl, or other property. The regional administrator may delegate, in writing, a member of the regional staff to give the required permission in these emergency situations. Nothing in this section authorizes in any situation the trapping, hunting, or killing of an endangered species.

Except for coyotes and Columbian ground squirrels, wildlife trapped or killed under this section remain~~((s))~~ the property of the state, and the person trapping or killing the wildlife shall notify the department immediately. The director shall dispose of wildlife so taken within three working days of receiving such a notification.

If the department receives recurring complaints regarding property being damaged as described in this section from the owner or tenant of real property, or receives such complaints from several such owners or tenants in a locale, the commission shall consider conducting a special hunt or special hunts to reduce the potential for such damage.

For purposes of this section, "crop" means an agricultural or horticultural product growing or harvested and includes wild shrubs and range land vegetation on privately owned cattle ranching lands. On such lands, the land owner or lessee may declare an emergency when the department has not responded within forty-eight hours after having been contacted by the land owner or lessee regarding crop damage by wild animals or wild birds. However, the department shall not allow claims for damage to wild shrubs or range land vegetation on such lands.

Deer and elk shall not be killed under the authority of this section on privately owned cattle ranching lands that were closed to public hunting during the previous hunting season, except for land closures which are coordinated with the department to protect property and livestock.

The department shall work closely with landowners and tenants suffering game damage problems to control damage without killing the animals when practical, to increase the harvest of damage-causing animals in hunting seasons, or to kill the animals when no other practical means of damage control is feasible.

For the purposes of this section, "immediate family member" means spouse, brother, sister, grandparent, parent, child, or grandchild.

Passed the House April 18, 1995.

Passed the Senate April 6, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 211

[Substitute House Bill 1342]

PARKS AND RECREATION COMMISSION—USE OF REVENUE

AN ACT Relating to the parks and recreation commission; amending RCW 43.51.047, 43.51.060, and 43.51.270; adding a new section to chapter 43.85 RCW; adding a new section to chapter 43.51 RCW; creating a new section; repealing RCW 43.51.280; 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 during the past fourteen years, the Washington state parks and recreation commission has endured a steady erosion of general fund operating support, which has caused park closures, staff reductions, and growing backlog of deferred maintenance projects. The legislature also finds that the growth of parks revenue has been constrained by staff limitations and by transfers of that revenue into the general fund.

The legislature intends to reverse the decline in operating support to its state parks, stabilize the system's level of general fund support, and inspire system employees and park visitors to enhance these irreplaceable resources and ensure their continuing availability to current and future state citizens and visitors. To achieve these goals, the legislature intends to dedicate park revenues to park

operations, developing and renovating park facilities, undertaking deferred maintenance, and improving park stewardship. The legislature clearly intends that such revenues shall complement, not supplant, future general fund support.

Sec. 2. RCW 43.51.047 and 1984 c 82 s 3 are each amended to read as follows:

Only timber which qualifies for cutting or removal under RCW 43.51.045(2) may be sold. Timber shall be sold only when surplus to the needs of the park.

Net revenue derived from timber sales shall be deposited in the ~~((trust land))~~ parks renewal and stewardship account created in section 7 of this act.

Sec. 3. RCW 43.51.060 and 1993 c 156 s 1 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 to contribute gifts, grants, and support to the commission for the purposes of this chapter. 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 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.

Sec. 4. RCW 43.51.270 and 1992 c 185 s 1 are each amended to read as follows:

(1) The ~~((board))~~ department of natural resources and the state parks and recreation commission shall have authority to negotiate a sale to the state parks and recreation commission, for park and outdoor recreation purposes, of ~~((the))~~ trust lands ~~((withdrawn as of August 9, 1971, pursuant to law for park purposes and included within the state parks listed in subsection (2) of this section; PROVIDED, That the sale shall be by contract with a pay-off period of not less than ten years, a price of eleven million twenty-four thousand seven hundred forty dollars or the))~~ at fair market value ~~((, whichever is higher, for the land value, and interest not to exceed six percent. All fees collected by the commission beginning in the 1973-1975 biennium shall be applied to the purchase price of the trust lands listed in subsection (2) of this section; the acquisition of the property described in subsections (3) and (4) of this section; and all reasonable costs of acquisition, described in subsection (5) of this section; the renovation and redevelopment of state park structures and facilities to extend the original life expectancy or correct damage to the environment of state parks; the maintenance and operation of state parks; and any cost of collection pursuant to appropriations from the trust land purchase account created in RCW 43.51.280. The department of natural resources shall not receive any management fee pursuant to the sale of the trust lands listed in subsections (2) and (4) of this section. Timber on the trust lands which are the subject of subsections (2), (3), and (4) of this section shall continue to be under the management of the department of natural resources until such time as the legislature appropriates funds to the parks and recreation commission for purchase of said timber. The state parks which include trust lands which shall be the subject of this sale pursuant to this section are:~~

- ~~(2)(a) Penrose Point~~
- ~~(b) Kopachuck~~
- ~~(c) Long Beach~~
- ~~(d) Leadbetter Point~~

- ~~(e) Nason Creek~~
- ~~(f) South Whidbey~~
- ~~(g) Blake Island~~
- ~~(h) Rockport~~
- ~~(i) Mt. Pilchuck~~
- ~~(j) Ginkgo~~
- ~~(k) Lewis & Clark~~
- ~~(l) Rainbow Falls~~
- ~~(m) Bogachiel~~
- ~~(n) Sequim Bay~~
- ~~(o) Federation Forest~~
- ~~(p) Moran~~
- ~~(q) Camano Island~~
- ~~(r) Beacon Rock~~
- ~~(s) Bridle Trails~~
- ~~(t) Chief Kamiakin (formerly Kamiak Butte)~~
- ~~(u) Lake Wenatchee~~
- ~~(v) Fields Springs~~
- ~~(w) Sun Lakes~~
- ~~(x) Seenic Beach.~~

~~(3) The board of natural resources and the state parks and recreation commission shall negotiate a mutually acceptable transfer for adequate consideration to the state parks and recreation commission to be used for park and recreation purposes:~~

~~(a) All the state owned Heart Lake property, including the timber therein, located in section 36, township 35 north, range 1E, W.M. in Skagit county;~~

~~(b) The Moran Park Additions, including the timber thereon, located in sections 16, 17, 19, 26, and 30, township 37 north, range 1W, W.M.;~~

~~(c) The Fort Ebey Addition (Partridge Point), including the timber thereon, located in section 36, township 32 north, range 1W, W.M. and section 6, township 31 north, range 1E, W.M.;~~

~~(d) The South Whidbey Addition (Classic U), including the timber thereon, located in section 29, township 30 north, range 2E, W.M.; and~~

~~(e) The Larrabee Addition, including the timber thereon, located in section 29, township 37 north, range 3E, W.M)).~~

~~((4)) (2) The ((board)) department of natural resources and the state parks and recreation commission shall negotiate a sale to the state parks and recreation commission of the lands and timber thereon identified in the joint study under section 4, chapter 163, Laws of 1985, and commonly referred to as((:~~

~~(a) The Paekwood trust property, Lewis county — located on the Cowlitz river at Paekwood;~~

~~(b) The Iron Horse (Bullfrog) trust property — adjoining the John Wayne Pioneer Trail at Iron Horse State Park;~~

- ~~(c) The Soleduck Corridor trust property, Clallam county — on the Soleduck river at Sappho;~~
- ~~(d) The Lake Sammamish (Providence Heights) trust property, King county — adjacent to Hans Jensen Youth Camp area at Lake Sammamish State Park;~~
- ~~(e) The Kinney Point trust property, Jefferson county — on the extreme southern tip of Marrowstone Island;~~
- ~~(f) The Hartstene Island trust property, Mason county — near Fudge Point on the east side of Hartstene Island approximately two miles south of Jarrell Cove State Park;~~
- ~~(g) The Wallace Falls trust property addition, Snohomish county — located adjacent to Wallace Falls State Park;~~
- ~~(h) The Diamond Point trust property, Clallam county — on the Strait of Juan de Fuca; provided, however, to the extent authorized by the commission by its action of December 7, 1990, as now or hereafter amended, the acreage and boundaries of the Diamond Point trust property acquired by the commission may vary from the acreage and boundaries described in the joint study. The commission may not authorize acquisition of any portion of the Diamond Point trust property by a private party prior to approval by the Clallam county board of commissioners of a preliminary master site plan for a resort development on the property;~~
- ~~(i) The Twin Falls trust property addition, King county — three parcels adjacent to the Twin Falls natural area, King county;~~
- ~~(j) The Skating Lake trust property, Pacific county — one and one-half miles north of Ocean Park and two miles south of Leadbetter State Park on the Long Beach Peninsula;~~
- ~~(k) The Kopachuck trust property addition, Pierce county — adjoining Kopachuck State Park;~~
- ~~(l)) the Point Lawrence trust property, San Juan county — on the extreme east point of Orcas Island((;~~
- ~~(m) The Huckleberry Island trust property, Skagit county — between Guemes Island and Saddlebag Island State Park;~~
- ~~(n) The Steamboat Rock (Osborn Bay) trust property, Grant county — southwest of Electric City on Osborn Bay;~~
- ~~(o) The Lord Hill trust property, Snohomish county — west of Monroe;~~
- ~~(p) The Larrabee trust property addition, Whatcom county — northeast of Larrabee State Park and Chuckanut Mountain;~~
- ~~(q) The Beacon Rock trust property, Skamania county — at Beacon Rock State Park;~~
- ~~(r) The Loomis Lake trust property, Pacific county — on the east shore of Loomis Lake and Lost Lake;~~
- ~~(s) The Lake Easton trust property addition, Kittitas county — one-quarter mile west of Lake Easton State Park near the town of Easton;~~
- ~~(t) The Fields Spring trust property addition, Asotin county — adjacent to the west and north boundaries of Fields Spring State Park;~~

~~(u) The Hoypus Hill trust property, Island county — south of the Hoypus Point natural forest area at Deception Pass State Park;~~

~~(v) The Cascade Island trust property, Skagit county — on the Cascade river about one and one half miles east of Marblemount off of the South Cascade county road and ten and one half miles east of Rockport State Park.~~

Payment for the property described in this subsection shall be derived from the trust land purchase account established pursuant to RCW 43.51.280). Timber conservation and management practices provided for in RCW 43.51.045 and 43.51.395 shall govern the management of land and timber transferred under this subsection as of the effective date of the transfer, upon payment for the property, and nothing in this chapter shall be construed as restricting or otherwise modifying the department of natural resources' management, control, or use of such land and timber until such date.

~~((5) The funds from the trust land purchase account designated for the acquisition of the property described in subsections (3) and (4) of this section, and the reasonable costs of acquisition, shall be deposited in the park land trust revolving fund, hereby created, to be utilized by the department of natural resources for the exclusive purpose of acquiring real property as a replacement for the property described in subsections (3) and (4) of this section to maintain the land base of the several trusts and for the reimbursement of the department of natural resources for all reasonable costs, to include, but not exclusively, the appraisal and cruising of the timber on the property for the acquisition of the property described in subsections (3) and (4) of this section. Disbursements from the park land trust revolving fund to acquire replacement property, and pay for all reasonable costs of acquisition, for the property described in subsections (3) and (4) of this section shall be on the authorization of the board of natural resources. In order to maintain an effective expenditure and revenue control, the park land trust revolving fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditures and payment of obligations from the fund. The state treasurer shall be custodian of the revolving fund.~~

~~The department of natural resources shall pay all reasonable costs, to include, but not exclusively, the appraisal and cruising of the timber on the property for the acquisition of the property described in subsection (3) of this section from funds provided in the trust land purchase account. Any agreement for the transfer of the property described in subsection (3) of this section shall not have an interest rate exceeding ten percent.~~

~~The parks and recreation commission is authorized to accept, receive, disburse, and administer grants or funds or gifts from any source including private individuals, public entities, and the federal government to supplement the funds from the trust land purchase account for the purchase of the property described in subsection (3) of this section:)~~

NEW SECTION. Sec. 5. A new section is added to chapter 43.85 RCW to read as follows:

The park land trust revolving fund is to be utilized by the department of natural resources for the exclusive purpose of acquiring real property, including all reasonable costs associated with these acquisitions, as a replacement for the property transferred to the state parks and recreation commission or as directed by the legislature in order to maintain the land base of the affected trusts. Proceeds from transfers of real property to the state parks and recreation commission or other proceeds identified from transfers of real property as directed by the legislature shall be deposited in this fund. Disbursement from the park land trust revolving fund to acquire replacement property shall be on the authorization of the department of natural resources. In order to maintain an effective expenditure and revenue control, the park land trust revolving fund is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

NEW SECTION. Sec. 6. RCW 43.51.280 and 1991 sp.s. c 16 s 922, 1991 sp.s. c 13 s 4, & 1987 c 466 s 2 are each repealed.

NEW SECTION. Sec. 7. A new section is added to chapter 43.51 RCW to read as follows:

The state parks renewal and stewardship account is created in the state treasury. Except as otherwise provided in this chapter, all receipts from user fees, concessions, leases, and other state park-based activities shall be deposited into the account. Expenditures from the account may be used for operating state parks, developing and renovating park facilities, undertaking deferred maintenance, enhancing park stewardship, and other state park purposes. Expenditures from the account may be made only after appropriation by the legislature.

NEW SECTION. Sec. 8. 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, 1995.

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 House April 18, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 212

[Substitute House Bill 1517]

CLARIFICATION OF AUTHORITY OF LOCAL GOVERNMENTS' RECEIPT AND EXPENDITURE OF FEDERAL AND PRIVATE FUNDS

AN ACT Relating to the receipt and expenditure of federal and private funds by local governments; amending RCW 35.21.735; creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** The purpose of this act is to assist community and economic development by clarifying the authority of all cities, towns, counties, and public corporations to engage in federally guaranteed "conduit financings" and to specify procedures that may be used for such conduit financings. Generally, in such a conduit financing a municipality borrows funds from the federal government or from private sources with the help of federal guarantees, without pledging the credit or tax revenues of the municipality, and then lends the proceeds for private projects that both fulfill public purposes, such as community and economic development, and provide the revenues to retire the municipal borrowings. Such conduit financings include issuance by municipalities of federally guaranteed notes under section 108 of the housing and community development act of 1974, as amended, to finance projects eligible under federal community development block grant regulations.

Sec. 2. RCW 35.21.735 and 1985 c 332 s 3 are each amended to read as follows:

(1) The legislature hereby declares that carrying out the purposes of federal grants or programs is both a public purpose and an appropriate function for ~~((such))~~ a city, town, county, or public corporation. The provisions of RCW 35.21.730 through 35.21.755 and RCW 35.21.660 and 35.21.670 and the enabling authority herein conferred to implement these provisions shall be construed to accomplish the purposes of RCW 35.21.730 through 35.21.755.

(2) All cities, towns ~~((and))~~, counties, and public corporations shall have the power and authority to enter into agreements with the United States or any agency or department thereof, or any agency of the state government or its political subdivisions, and pursuant to such agreements may receive and expend, or cause to be received and expended by a custodian or trustee, federal or private funds for any lawful public purpose. Pursuant to any such agreement, a city, town, county, or public corporation may issue bonds, notes, or other evidences of indebtedness that are guaranteed or otherwise secured by funds or other instruments provided by or through the federal government or by the federal government or an agency or instrumentality thereof under section 108 of the housing and community development act of 1974 (42 U.S.C. Sec. 5308), as amended, or its successor, and may agree to repay and reimburse for any liability thereon any guarantor of any such bonds, notes, or other evidences of indebtedness issued by such jurisdiction or public corporation, or issued by any other public entity. For purposes of this subsection federal housing mortgage insurance shall not constitute a federal guarantee or security.

(3) A city, town, county, or public corporation may pledge, as security for any such bonds, notes, or other evidences of indebtedness or for its obligations to repay or reimburse any guarantor thereof, its right, title, and interest in and to any or all of the following: (a) Any federal grants or payments received or that may be received in the future; (b) any of the following that may be obtained directly or indirectly from the use of any federal or private funds received as authorized in this section: (i) Property and interests therein, and (ii) revenues;

(c) any payments received or owing from any person resulting from the lending of any federal or private funds received as authorized in this section; (d) any proceeds under (a), (b), or (c) of this subsection and any securities or investments in which (a), (b), or (c) of this subsection or proceeds thereof may be invested; (e) any interest or other earnings on (a), (b), (c), or (d) of this subsection.

(4) A city, town, county, or public corporation may establish one or more special funds relating to any or all of the sources listed in subsection (3)(a) through (e) of this section and pay or cause to be paid from such fund the principal, interest, premium, if any, and other amounts payable on any bonds, notes, or other evidences of indebtedness authorized under this section, and pay or cause to be paid any amounts owing on any obligations for repayment or reimbursement of guarantors of any such bonds, notes, or other evidences of indebtedness. A city, town, county, or public corporation may contract with a financial institution either to act as trustee or custodian to receive, administer, and expend any federal or private funds, or to collect, administer, and make payments from any special fund as authorized under this section, or both, and to perform other duties and functions in connection with the transactions authorized under this section. If the bonds, notes, or other evidences of indebtedness and related agreements comply with subsection (6) of this section, then any such funds held by any such trustee or custodian, or by a public corporation, shall not constitute public moneys or funds of any city, town, or county and at all times shall be kept segregated and set apart from other funds.

(5) For purposes of this section, "lawful public purpose" includes, without limitation, any use of funds, including loans thereof to public or private parties, authorized by the agreements with the United States or any department or agency thereof under which federal or private funds are obtained, or authorized under the federal laws and regulations pertinent to such agreements.

(6) If any such federal or private funds are loaned or granted to any private party or used to guarantee any obligations of any private party, then any bonds, notes, other evidences of indebtedness issued or entered into for the purpose of receiving or causing the receipt of such federal or private funds, and any agreements to repay or reimburse guarantors, shall not be obligations of any city, town, or county and shall be payable only from a special fund as authorized in this section or from any of the security pledged pursuant to the authority of this section, or both. Any bonds, notes, or other evidences of indebtedness to which this subsection applies shall contain a recital to the effect that they are not obligations of the city, town, or county or the state of Washington and that neither the faith and credit nor the taxing power of the state or any municipal corporation or subdivision of the state or any agency of any of the foregoing, is pledged to the payment of principal, interest, or premium, if any, thereon. Any bonds, notes, other evidences of indebtedness, or other obligations to which this subsection applies shall not be included in any computation for purposes of limitations on indebtedness. To the extent expressly agreed in writing by a city,

town, county, or public corporation, this subsection shall not apply to bonds, notes, or other evidences of indebtedness issued for, or obligations incurred for, the necessary support of the poor and infirm by that city, town, county, or public corporation.

(7) Any bonds, notes, or other evidences of indebtedness issued by, or reimbursement obligations incurred by, a city, town, county, or public corporation consistent with the provisions of this section but prior to the effective date of this section, and any loans or pledges made by a city, town, or county in connection therewith substantiall consistent with thep rovisions of this section but prior to the effective date of this section, are deemed authorized and shall not be held void voidable or invalid due to an ,lack of authorit under the laws of this state.

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. The authority granted by this act is additional and supplemental to any other authority of any city, town, county, or public corporation. Nothing in this act may be construed to imply that any of the power or authority granted hereby was not available to any city, town, county, or public corporation under prior law. Any previous actions consistent with the provisions of this act are ratified and confirmed.

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 April 19, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 213

[House Bill 1583]

LOCAL GOVERNMENT WHISTLEBLOWERS—REPORTING PROCEDURES

AN ACT Relating to local government whistleblower reporting; and amending RCW 42.41.030.

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

Sec. 1. RCW 42.41.030 and 1992 c 44 s 3 are each amended to read as follows:

(1) Every local government employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.

(2) The governing body or chief administrative officer of each local government shall adopt a policy on the appropriate procedures to follow for

reporting such information and shall provide information to their employees on the policy. Local governments are encouraged to consult with their employees on the policy.

(3) The policy shall describe the appropriate person or persons within the local government to whom to report information and a list of appropriate person or persons outside the local government to whom to report. The list shall include the county prosecuting attorney.

(4) Each local government shall permanently post a summary of the procedures for reporting information on an alleged improper governmental action and the procedures for protection against retaliatory actions described in RCW 42.41.040 in a place where all employees will have reasonable access to it. A copy of the summary shall be made available to any employee upon request.

(5) A local government may require as part of its policy that, except in the case of an emergency, before an employee provides information of an improper governmental action to a person or an entity who is not a public official or a person listed pursuant to subsection (3) of this section, the employee shall submit a written report to the local government. Where a local government has adopted such a policy under this section, an employee who fails to make a good faith attempt to follow the policy shall not receive the protections of this chapter.

(6) If a local government has failed to adopt a policy as required by subsection (2) of this section, an employee may report alleged improper government action directly to the county prosecuting attorney or, if the prosecuting attorney or an employee of the prosecuting attorney participated in the alleged improper government action, to the state auditor. The cost incurred by the state auditor in such investigations shall be paid by the local government through the municipal revolving account authorized in RCW 43.09.282.

(7) The identity of a reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing.

Passed the House April 19, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 214

[Engrossed Substitute House Bill 2036]

CREDIT DISABILITY INSURANCE, CREDIT CASUALTY INSURANCE,
AND CREDIT ACCIDENT AND HEALTH INSURANCE—REGULATION—EXEMPTIONS

AN ACT Relating to credit involuntary unemployment insurance; and amending RCW 48.17.060 and 48.17.190.

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

Sec. 1. RCW 48.17.060 and 1975 1st ex.s. c 266 s 7 are each amended to read as follows:

(1) No person shall in this state act as or hold himself out to be an agent, broker, solicitor, or adjuster unless then licensed therefor by this state.

(2) No agent, solicitor, or broker shall solicit or take applications for, procure, or place for others any kind of insurance for which he is not then licensed.

(3) This section shall not apply with respect to any person securing and forwarding information required for the purposes of group credit life ~~((and credit disability insurance in connection with an extension of credit and such other credit life or disability insurance lines))~~ and credit disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations in connection with an extension of credit and such other credit life and disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations as the commissioner shall determine, and where no commission or other compensation is payable on account of the securing and forwarding of such information ~~((~~PROVIDED, That~~)).~~ However, the reimbursement of a creditor's actual expenses for securing and forwarding information required for the purposes of such group insurance shall not be considered a commission or other compensation if such reimbursement does not exceed three dollars per certificate issued, or in the case of a monthly premium plan extending beyond twelve months, not to exceed three dollars per loan transaction revision per year.

(4) Any person violating this section shall be liable to a fine of not to exceed five hundred dollars and imprisonment for not to exceed six months for each instance of such violation.

Sec. 2. RCW 48.17.190 and 1979 c 138 s 1 are each amended to read as follows:

The commissioner may issue limited licenses to the following:

(1) Persons selling transportation tickets of a common carrier of persons or property who shall act as such agents only as to transportation ticket policies of disability insurance or baggage insurance on personal effects.

(2) Compensated master policyholders of credit life ~~((and credit accident and health insurance))~~ and credit accident and health insurance and credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations, retail dealers compensated by any such master policyholders, or the authorized representative(s) of either.

(3) Persons selling special or unique policies of insurance covering goods sold or leased from a primary business or activity other than the transaction of insurance or covering collateral securing loans from a primary business or activity other than the transaction of insurance if, in the commissioner's discretion, such limited license would safeguard and promote the public interest.

Passed the House March 9, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 215

[Substitute Senate Bill 5084]

COMMUTE TRIP REDUCTION PROGRAMS—FEES—EXEMPTIONS

AN ACT Relating to state agency commute trip reduction programs; amending RCW 43.01.230, 43.01.225, 46.08.172, and 43.99H.070; and adding new sections to chapter 43.01 RCW.

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

Sec. 1. RCW 43.01.230 and 1993 c 394 s 6 are each amended 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.

Sec. 2. RCW 43.01.225 and 1993 c 394 s 5 are each amended to read as follows:

(1) 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)) resulting from parking fees established by the department of general administration under RCW 46.08.172 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 agency 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. 3. A new section is added to chapter 43.01 RCW to read as follows:

(1) There is hereby established an account in the state treasury to be known as the state agency parking account. All parking income collected from the fees imposed by state agencies on parking spaces at state-owned or leased facilities, including the capitol campus, shall be deposited in the state agency parking account. Only the office of financial management 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. No agency may receive an allotment greater than the amount of revenue deposited into the state agency parking account.

(2) An agency may, as an element of the agency's commute trip reduction program to achieve the goals set forth in RCW 70.94.527, impose parking rental fees at state-owned and leased properties. These fees will be deposited in the state agency parking account. Each agency shall establish a committee to advise the agency director on parking rental fees, taking into account the market rate of comparable, privately owned rental parking in each region. The agency shall solicit representation of the employee population including, but not limited to, management, administrative staff, production workers, and state employee bargaining units. Funds shall be used by agencies to: (a) Support the agencies' commute trip reduction program under RCW 70.94.521 through 70.94.551; (b) support the agencies' parking program; or (c) support the lease or ownership costs for the agencies' parking facilities.

(3) In order to reduce the state's subsidization of employee parking, after July 1997 agencies shall not enter into leases for employee parking in excess of building code requirements, except as authorized by the director of general administration. In situations where there are fewer parking spaces than employees at a worksite, parking must be allocated equitably, with no special preference given to managers.

(4) The director of general administration must report to the house and senate transportation committees no later than December 1, 1997, regarding the implementation of chapter . . . , Laws of 1995 (this act). The report must include an estimate of the reduction in parking supply and an estimate of the cost savings.

Sec. 4. RCW 46.08.172 and 1993 c 394 s 4 are each amended to read as follows:

The director of the department of general administration shall establish equitable and consistent parking rental fees for ~~((state-owned or leased property))~~ the capitol campus and may, if requested by agencies, establish equitable and consistent parking rental fees for agencies off the capitol campus, to be charged to employees, visitors, clients, service providers, and others, that reflect the

legislature's intent to reduce state subsidization of parking or to meet the commute trip reduction goals established in RCW 70.94.527. (~~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. 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.

NEW SECTION. Sec. 5. A new section is added to chapter 43.01 RCW to read as follows:

All institutions of higher education as defined under RCW 28B.10.016 are exempt from the requirements under RCW 43.01.225.

Sec. 6. RCW 43.99H.070 and 1989 1st ex.s. c 14 s 7 are each amended to read as follows:

In addition to any other charges authorized by law and to assist in the reimbursement of principal and interest payments on bonds issued for the purposes of RCW 43.99H.020(15), the following revenues may be collected:

(1) The director of general administration may assess a charge against each state board, commission, agency, office, department, activity, or other occupant of the facility or building constructed with bonds issued for the purposes of RCW 43.99H.020(15) for payment of a proportion of costs for each square foot of floor space assigned to or occupied by the entity. Payment of the amount billed to the entity for such occupancy shall be made quarterly during each fiscal year. The director of general administration shall deposit the payment in the capitol campus reserve account.

(2) The director of general administration may pledge a portion of the parking rental income collected by the department of general administration from parking space developed as a part of the facility constructed with bonds issued for the purposes of RCW 43.99H.020(15). The pledged portion of this income shall be deposited in the capitol campus reserve account. The unpledged portion of this income shall continue to be deposited in the state (~~capitol~~) vehicle parking account.

(3) The state treasurer shall transfer four million dollars from the capitol building construction account to the capitol campus reserve account each fiscal year from 1990 to 1995. Beginning in fiscal year 1996, the director of general administration, in consultation with the state finance committee, shall determine the necessary amount for the state treasurer to transfer from the capitol building

construction account to the capitol campus reserve account for the purpose of repayment of the general fund of the costs of the bonds issued for the purposes of RCW 43.99H.020(15).

(4) Any remaining balance in the state building and parking bond redemption account after the final debt service payment shall be transferred to the capitol campus reserve account.

Passed the Senate April 18, 1995.

Passed the House April 12, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 216

[Second Substitute Senate Bill 5088]

SEXUALLY VIOLENT PREDATORS—REVISION OF RELATED PROVISIONS

AN ACT Relating to sexually violent predators; amending RCW 71.09.020, 71.09.025, 71.09.030, 71.09.040, 71.09.050, 71.09.060, 71.09.070, 71.09.080, 71.09.090, 71.09.110, and 9A.76.120; adding new sections to chapter 71.09 RCW; repealing RCW 71.09.100; and prescribing penalties.

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

Sec. 1. RCW 71.09.020 and 1992 c 145 s 17 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(2) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(3) "Likely to engage in predatory acts of sexual violence" means that the person more probably than not will engage in such acts. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(4) "Predatory" means acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization.

~~((4))~~ (5) "Recent overt act" means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

(6) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the

first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to chapter 71.09 RCW, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(7) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement.

(8) "Secretary" means the secretary of social and health services or his or her designee.

Sec. 2. RCW 71.09.025 and 1992 c 45 s 3 are each amended to read as follows:

(1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in RCW 71.09.020(1), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county where that person was charged, three months prior to:

(i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

(ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;

(iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.090(3); or

(iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

(b) The agency shall ~~((inform))~~ provide the prosecutor ~~((of))~~ with all relevant information including but not limited to the following information:

(i) ~~((The person's name, identifying factors, anticipated future residence, and offense history; and))~~ A complete copy of the institutional records compiled by the department of corrections relating to the person, and any such out-of-state department of corrections' records, if available;

(ii) ~~((Documentation of institutional adjustment and any treatment received))~~
A complete copy, if applicable, of any file compiled by the indeterminate sentence review board relating to the person;

(iii) All records relating to the psychological or psychiatric evaluation and/or treatment of the person;

(iv) A current record of all prior arrests and convictions, and full police case reports relating to those arrests and convictions; and

(v) A current mental health evaluation or mental health records review.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services.

Sec. 3. RCW 71.09.030 and 1992 c 45 s 4 are each amended to read as follows:

When it appears that: (1) ~~((The term of total confinement of))~~ A person who at any time previously has been convicted of a sexually violent offense is about to ~~((expire, or has expired))~~ be released from total confinement on, before, or after July 1, 1990; (2) ~~((the term of total confinement of))~~ a person found to have committed a sexually violent offense as a juvenile is about to ~~((expire, or has expired))~~ be released from total confinement on, before, or after July 1, 1990; (3) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.090(3); ~~((or))~~ (4) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (5) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act; and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation.

Sec. 4. RCW 71.09.040 and 1990 c 3 s 1004 are each amended to read as follows:

(1) Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody ~~((and))~~.

(2) Within seventy-two hours after a person is taken into custody pursuant to subsection (1) of this section, the court shall provide the person with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. At this hearing, the court shall (a) verify the person's identity, and (b) determine whether probable cause exists to believe that the person is a sexually violent predator. At the probable cause hearing, the state may rely upon the petition and certification for determination of probable cause filed pursuant to RCW 71.09.030. The state may supplement this with additional documentary evidence or live testimony.

(3) At the probable cause hearing, the person shall have the following rights in addition to the rights previously specified: (a) To be represented by counsel; (b) to present evidence on his or her behalf; (c) to cross-examine witnesses who testify against him or her; (d) to view and copy all petitions and reports in the court file.

(4) If the probable cause determination is made, the judge shall direct that the person ((shall)) be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections. In no event shall the person be released from confinement prior to trial.

Sec. 5. RCW 71.09.050 and 1990 c 3 s 1005 are each amended to read as follows:

(1) Within forty-five days after the ((filing of a petition pursuant to RCW 71.09.030)) completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this chapter, any person subject to 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. The person shall be confined in a secure facility for the duration of the trial.

(2) Whenever any person is subjected to an examination under this chapter, he or she may retain experts or professional persons to perform an examination on their behalf. When the person wishes to be examined by a qualified expert or professional person of his or her own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(3) The person, the prosecuting attorney or attorney general, or the judge shall have the right to demand that the trial be before a twelve-person jury. If no demand is made, the trial shall be before the court.

Sec. 6. RCW 71.09.060 and 1990 1st ex.s. c 12 s 4 are each amended to read as follows:

(1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in RCW 71.09.020((4))~~(6)~~(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe either (a) to be at large, or (b) to be released to a less restrictive alternative as set forth in section 10 of this act. ~~((Such control, care, and treatment shall be provided at a facility operated by the department of social and health services.))~~ If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to or has been released pursuant to RCW 10.77.090(3), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.090(3) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts

charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) The state shall comply with RCW 10.77.220 while confining the person pursuant to this chapter, except that during all court proceedings the person shall be detained in a secure facility. The facility shall not be located on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

Sec. 7. RCW 71.09.070 and 1990 c 3 s 1007 are each amended to read as follows:

Each person committed under this chapter shall have a current examination of his or her mental condition made at least once every year. The annual report shall include consideration of whether conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community. The person may retain, or if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her, and such expert or professional person shall have access to all records concerning the person. The periodic report shall be provided to the court that committed the person under this chapter.

Sec. 8. RCW 71.09.080 and 1990 c 3 s 1008 are each amended to read as follows:

~~(The involuntary detention or commitment of persons under this chapter shall conform to constitutional requirements for care and treatment.)~~ (1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter.

(2) Any person committed pursuant to this chapter has the right to adequate care and individualized treatment. The department of social and health services 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 made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting attorney, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(3) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the

detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

(4) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

(5) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so.

Sec. 9. RCW 71.09.090 and 1992 c 45 s 7 are each amended to read as follows:

(1) If the secretary (~~(of the department of social and health services)~~) determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall within forty-five days order a hearing. The prosecuting attorney or the attorney general, if requested by the county, shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney or attorney general. The burden of proof shall be upon the prosecuting attorney or attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if conditionally released to a less restrictive alternative or unconditionally discharged is likely to engage in predatory acts of sexual violence.

(2) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. If the person does not

affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she is safe to be ~~((at-large))~~ conditionally released to a less restrictive alternative or unconditionally discharged. The committed person shall have a right to have an attorney represent him or her at the show cause hearing but the person is not entitled to be present at the show cause hearing. If the court at the show cause hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is ~~((safe to be at large and is))~~ not likely to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting attorney or the attorney general if requested by the county shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is ~~((not safe to be at large and if released is))~~ likely to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged.

(3) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged.

NEW SECTION. Sec. 10. Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) the person is willing to comply with the treatment provider and all requirements imposed by

the treatment provider and by the court; and (5) the person is willing to comply with supervision requirements imposed by the department of corrections.

NEW SECTION. Sec. 11. (1) Upon the conclusion of the evidence in a hearing held pursuant to RCW 71.09.090, if the court finds that there is no legally sufficient evidentiary basis for a reasonable jury to find that the conditions set forth in section 10 of this act have been met, the court shall grant a motion by the state for a judgment as a matter of law on the issue of conditional release to a less restrictive alternative.

(2) Whenever the issue of conditional release to a less restrictive alternative is submitted to the jury, the court shall instruct the jury to return a verdict in substantially the following form: Has the state proved beyond a reasonable doubt that the proposed less restrictive alternative is not in the best interests of respondent or will not adequately protect the community? Answer: Yes or No.

NEW SECTION. Sec. 12. (1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community, and the court determines that the minimum conditions set forth in section 9 of this act are met, the court shall enter judgment and direct a conditional release.

(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections, then the service provider so designated must agree in writing to provide such treatment.

(4) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. The court shall order the department of corrections to investigate the less restrictive alternative and recommend any additional conditions to the court. These conditions shall include, but are not limited to the following: Specification of residence, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(5) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecutor of the county in which the person was found to be a sexually violent predator, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

(6) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. 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, 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 to a less restrictive alternative. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection (5) of this section and the opinions of the secretary and other experts or professional persons.

NEW SECTION. **Sec. 13.** (1) Any service provider submitting reports pursuant to section 12(5) of this act, the supervising community corrections officer, the prosecuting attorney, or the attorney general may petition the court, or the court on its own motion may schedule an immediate hearing, for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner or the court believes the released person is not complying with the terms and conditions of his or her release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the supervising community corrections officer, or the court, based upon information received by them, reasonably believes that a conditionally released person is not complying with the terms and conditions of his or her conditional release to a less restrictive alternative, the court or community corrections officer 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 person's 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 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 person's apprehension, shall promptly schedule a hearing. The issue to be determined is whether the state has proven by a preponderance of the evidence that the conditionally released person did not comply with the terms and conditions of his or her release. Hearsay evidence is admissible if the court finds it otherwise reliable. At the hearing, the

court shall determine whether the person shall continue to be conditionally released on the same or modified conditions or whether his or her conditional release shall be revoked and he or she shall be committed to total confinement, subject to release only in accordance with provisions of this chapter.

Sec. 14. RCW 71.09.110 and 1990 c 3 s 1011 are each amended to read as follows:

The department of social and health services shall be responsible for all costs relating to the evaluation and treatment of persons committed to their custody whether in a secure facility or under a less restrictive alternative under any provision of this chapter. Reimbursement may be obtained by the department for the cost of care and treatment of persons committed to its custody whether in a secure facility or under a less restrictive alternative pursuant to RCW 43.20B.330 through 43.20B.370.

Sec. 15. RCW 9A.76.120 and 1982 1st ex.s. c 47 s 24 are each amended to read as follows:

(1) A person is guilty of escape in the second degree if:

(a) He or she escapes from a detention facility; (~~or~~)

(b) Having been charged with a felony or an equivalent juvenile offense, he or she escapes from custody; or

(c) Having been found to be a sexually violent predator and being under an order of conditional release, he or she leaves the state of Washington without prior court authorization.

(2) Escape in the second degree is a class C felony.

NEW SECTION. **Sec. 16.** In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person while on conditional release, the superintendent or community corrections officer shall notify the following as appropriate: 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.

NEW SECTION. **Sec. 17.** (1) At the earliest possible date, and in no event later than thirty days before conditional release or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

(a) The chief of police of the city, if any, in which the person will reside or in which placement will be made under a less restrictive alternative;

(b) The sheriff of the county in which the person will reside or in which placement will be made under a less restrictive alternative; and

(c) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

The department shall notify the state patrol of the release of all sexually violent predators and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific person found to be a sexually violent predator under this chapter:

(a) The victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. "Next of kin" as used in this section means a person's spouse, parents, siblings, and children;

(b) Any witnesses who testified against the person in his or her commitment trial under RCW 71.09.060; and

(c) 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 committed person.

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department 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 committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department 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.

(4) If the victim or victims of any sexually violent offenses for which the person was convicted in the past or 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.

(5) The department of social and health services 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.

(6) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

NEW SECTION. Sec. 18. For purposes of sections 19 through 21 of this act:

(1) "Escorted leave" means a leave of absence from a facility housing persons detained or committed pursuant to this chapter under the continuous supervision of an escort.

(2) "Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany a resident on a leave of absence and be in visual or auditory contact with the resident at all times.

(3) "Resident" means a person detained or committed pursuant to this chapter.

NEW SECTION. Sec. 19. The superintendent of any facility housing persons detained or committed pursuant to this chapter may, subject to the approval of the secretary, grant escorted leaves of absence to residents confined in such institutions to:

(1) Go to the bedside of the resident's wife, husband, child, mother or father, or other member of the resident's immediate family who is seriously ill;

(2) Attend the funeral of a member of the resident's immediate family listed in subsection (1) of this section; and

(3) Receive necessary medical or dental care which is not available in the institution.

NEW SECTION. Sec. 20. A resident shall not be allowed to start a leave of absence under section 19 of this act until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having jurisdiction in the area of the resident's destination.

NEW SECTION. Sec. 21. (1) The secretary is authorized to adopt rules providing for the conditions under which residents will be granted leaves of absence and providing for safeguards to prevent escapes while on leaves of absence. Leaves of absence granted to residents under section 19 of this act, however, shall not allow or permit any resident to go beyond the boundaries of this state.

(2) The secretary shall adopt rules requiring reimbursement of the state from the resident granted leave of absence, or the resident's family, for the actual costs incurred arising from any leave of absence granted under the authority of section 19 (1) and (2) of this act. No state funds shall be expended in connection with leaves of absence granted under section 19 (1) and (2) of this act unless the resident and the resident's immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence.

NEW SECTION. Sec. 22. RCW 71.09.100 and 1990 c 3 s 1010 are each repealed.

NEW SECTION. Sec. 23. Sections 10 through 13 and 16 through 21 of this act are each added to chapter 71.09 RCW.

Passed the Senate April 17, 1995.

Passed the House April 10, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 217

[Senate Bill 5287]

STUDENT FINANCIAL AID—FORM—USE OF PAYMENTS

AN ACT Relating to student financial aid; amending RCW 28B.80.160; repealing RCW 28B.102.900; and declaring an emergency.

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

Sec. 1. RCW 28B.80.160 and 1985 c 370 s 18 are each amended to read as follows:

In the development of any such plans as called for within RCW 28B.80.150, the board shall use at least the following criteria:

(1) Students who are eligible to attend compact-authorized programs in other states shall meet the Washington residency requirements of chapter 28B.15 RCW prior to being awarded tuition assistance (~~(grants;)~~).

(2) For recipients named after January 1, 1995, the tuition assistance shall be in the form of loans that may be completely forgiven in exchange for the student's service within the state of Washington after graduation. The requirements for such service and provisions for loan forgiveness shall be determined in rules adopted by the board.

(3) If appropriations are insufficient to fund all students qualifying under subsection (1) of this section, then the plans shall include criteria for student selection that would be in the best interest in meeting the state's educational needs, as well as recognizing the financial needs of students.

(4) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, that are paid by or on behalf of participants under this section, shall be deposited with the board and placed in an account created in this section and shall be used to cover the costs of granting the scholarships, maintaining necessary records, and making collections. 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 loans to eligible students.

(5) The Washington interstate commission on higher education professional student exchange program trust fund is created in the custody of the state treasurer. All receipts from loan repayment shall be deposited into the fund. Only the higher education coordinating board, or its designee, may authorize expenditures from the fund. No appropriation is required for expenditures from this fund.

NEW SECTION. Sec. 2. RCW 28B.102.900 and 1994 c 126 s 4 & 1987 c 437 s 9 are each repealed.

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 18, 1995.

Passed the House April 13, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 218

[Engrossed Senate Bill 5397]

ASBESTOS CERTIFICATION

AN ACT Relating to asbestos certification; and amending RCW 49.26.013, 49.26.016, 49.26.100, 49.26.110, 49.26.115, and 49.26.120.

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

Sec. 1. RCW 49.26.013 and 1989 c 154 s 2 are each amended to read as follows:

(1) Any owner or owner's agent who allows or authorizes any construction, renovation, remodeling, maintenance, repair, or demolition project which has a reasonable possibility, as defined by the department, of disturbing or releasing asbestos into the air, shall perform or cause to be performed, using practices approved by the department, a good faith inspection to determine whether the proposed project will disturb or release any material containing asbestos into the air.

Such inspections shall be conducted by persons meeting the accreditation requirements of the federal toxics substances control act, section 206(a) (1) and (3) (15 U.S.C. 2646(a) (1) and (3)).

An inspection under this section is not required if the owner or owner's agent is reasonably certain that asbestos will not be disturbed or assumes that asbestos will be disturbed by a project which involves construction, renovation, remodeling, maintenance, repair, or demolition and takes the maximum precautions as specified by all applicable federal and state requirements.

(2) Except as provided in RCW 49.26.125, the owner or owner's agent shall prepare and maintain a written report describing each inspection, or a statement of assumption of the presence or reasonable certainty of the absence of asbestos, and shall ~~((make))~~ provide a copy of the written report or statement ~~((available))~~ to all contractors before they apply or bid on work. In addition, upon written or oral request, the owner or owner's agent shall make a copy of the written report available to: (1) The department of labor and industries; (2) contractors; and (3) the collective bargaining representatives or employee representatives, if any, of employees who may be exposed to any asbestos or material containing asbestos.

A copy shall be posted as prescribed by the department in a place that is easily accessible to such employees.

Sec. 2. RCW 49.26.016 and 1989 c 154 s 3 are each amended to read as follows:

(1) Any owner or owner's agent who allows the start of any construction, renovation, remodeling, maintenance, repair, or demolition without first (a) conducting the inspection and preparing and maintaining the report of the inspection, or preparing and maintaining a statement of assumption of the presence or reasonable certainty of the absence of asbestos, as required under RCW 49.26.013; and (b) preparing and maintaining the additional written description of the project as required under RCW 49.26.120 shall be subject to a mandatory fine of not less than two hundred fifty dollars for each violation. Each day the violation continues shall be considered a separate violation. In addition, any construction, renovation, remodeling, maintenance, repair, or demolition which was started without meeting the requirements of RCW 49.26.013 and 49.26.120 shall be halted immediately and cannot be resumed before meeting such requirements.

(2) ~~((It is the responsibility of any contractor registered under chapter 18.27 RCW to request a copy of the written report or statement required under RCW 49.26.013 from the owner or the owner's agent.))~~ No contractor may commence any construction, renovation, remodeling, maintenance, repair or demolition project without receiving the copy of the written report or statement from the owner or the owner's agent. Any contractor who begins any project without the copy of the written report or statement shall be subject to a mandatory fine of not less than two hundred and fifty dollars per day. Each day the violation continues shall be considered a separate violation.

(3) ~~((Any partnership, firm, corporation or sole proprietorship that begins any construction, renovation, remodeling, maintenance, repair, or demolition without meeting the requirements of RCW 49.26.013 and the notification requirement under RCW 49.26.120 shall lose the exemptions provided in RCW 49.26.110 and 49.26.120 for a period of not less than six months.~~

(4)) The certificate of any asbestos contractor who knowingly violates any provision of this chapter or any rule adopted under this chapter shall be revoked for a period of not less than six months.

~~((5))~~ (4) The penalties imposed in this section are in addition to any penalties under RCW 49.26.140.

Sec. 3. RCW 49.26.100 and 1989 c 154 s 4 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Asbestos abatement project" means an asbestos project involving three square feet or three linear feet, or more, of asbestos-containing material.

(2) "Asbestos project" means the construction, demolition, repair, maintenance, remodeling, or renovation of any public or private building or mechanical piping equipment or systems involving the demolition, removal, encapsulation, salvage, or disposal of material, or outdoor activity, releasing or likely to release asbestos fibers into the air.

~~((2))~~ (3) "Department" means the department of labor and industries.

~~((3))~~ (4) "Director" means the director of the department of labor and industries or the director's designee.

~~((4))~~ (5) "Person" means any individual, partnership, firm, association, corporation, sole proprietorship, or the state of Washington or its political subdivisions.

~~((5))~~ (6) "Certified asbestos supervisor" means an individual who is certified by the department to supervise an asbestos project. A certified asbestos supervisor is not required for projects involving less than three square feet or three linear feet of asbestos-containing material.

~~((6))~~ (7) "Certified asbestos worker" means an individual who is certified by the department to work on an asbestos project.

~~((7))~~ (8) "Certified asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship registered under chapter 18.27 RCW that submits a bid or contracts to remove or encapsulate asbestos for another and is certified by the department to remove or encapsulate asbestos.

~~((8))~~ (9) "Owner" means the owner of any public or private building, structure, facility or mechanical system, or the agent of such owner, but does not include individuals who work on asbestos projects on their own single-family residences no part of which is used for any commercial purpose.

Sec. 4. RCW 49.26.110 and 1989 c 154 s 5 are each amended to read as follows:

(1) No employee or other individual is eligible to do work governed by this chapter unless issued a certificate by the department ~~((except, in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship which has not lost this exemption under RCW 49.26.016(3), and conducted in its own facility and by its own employees. In cases excepted under this section:~~

~~(a) Direct, on-site supervision by a certified asbestos supervisor shall be required for asbestos projects performed at one project location by workers who are not certified.~~

~~(b) If a project is conducted using only certified workers or if a certified worker functions as a foreman or lead person, supervision can be performed in the regular course of a supervisor's duties and need not be direct and on-site.~~

~~(c) The partnership, firm, corporation or sole proprietorship shall submit a written description to the department of the kinds of asbestos projects expected to be undertaken and the procedures to be used in undertaking asbestos projects, which description shall demonstrate competence in performing the work in~~

~~compliance with the requirements of this chapter, rules adopted under this chapter, and any other requirements of law for the safe demolition, removal, encapsulation, salvage, and disposal of asbestos)).~~

(2) To qualify for a certificate:

(a) Certified asbestos workers (~~and supervisors~~) must have successfully completed a four-day training course (~~of at least thirty hours~~). Certified asbestos supervisors must have completed a five-day training course. Training courses shall be provided or approved by the department(~~(, on the)~~); shall cover such topics as the health and safety aspects of the removal and encapsulation of asbestos, including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination(~~(;)~~); and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor. However, the authority of the director to adopt rules implementing this section is limited to rules that are specifically required, and only to the extent specifically required, for the standards to be as stringent as the applicable federal laws governing work subject to this chapter; and

(b) All applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department.

These requirements are intended to represent the minimum requirements for certification and shall not preclude contractors or employers from providing additional education or training. (~~The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor.~~)

(3) The department shall provide for the reciprocal certification of any individual trained to engage in asbestos projects in another state when the prior training is shown to be substantially similar to the training required by the department. Nothing shall prevent the department from requiring such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate, as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under RCW 49.26.016, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be denied, suspended, or revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

(5) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(6) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department.

Sec. 5. RCW 49.26.115 and 1989 c 154 s 6 are each amended to read as follows:

Before working on an asbestos abatement project, a contractor shall obtain an asbestos contractor's certificate from the department and shall have in its employ at least one certified asbestos supervisor who is responsible for supervising all asbestos abatement projects undertaken by the contractor and for assuring compliance with all state laws and regulations regarding asbestos. The contractor shall apply for certification renewal every year. The department shall ensure that the expiration of the contractor's registration and the expiration of his or her asbestos contractor's certificate coincide.

Sec. 6. RCW 49.26.120 and 1989 c 154 s 7 are each amended to read as follows:

(1) No person may assign any employee, contract with, or permit any individual or person to remove or encapsulate asbestos in any facility unless performed by a certified asbestos worker and under the direct, on-site supervision of a certified asbestos supervisor ~~((except, in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship which has not lost this exemption under RCW 49.26.016(3), and conducted in its own facility and by its own employees. In cases excepted under this section:~~

~~(a) Direct, on-site supervision by a certified asbestos supervisor shall be required for asbestos projects performed at one project location by workers who are not certified.~~

~~(b) If a project is conducted using only certified workers or if a certified worker functions as a foreman or lead person, supervision can be performed in the regular course of a supervisor's duties and need not be direct and on-site.~~

~~(c) The partnership, firm, corporation or sole proprietorship shall submit a written description to the department of the kinds of asbestos projects expected to be undertaken and the procedures to be used in undertaking asbestos projects, which description shall demonstrate competence in performing the work in compliance with the requirements of this chapter, rules adopted under this chapter, and any other requirements of law for the safe demolition, removal, encapsulation, salvage, and disposal of asbestos).~~ In cases in which an employer conducts an asbestos abatement project in its own facility and by its own employees, supervision can be performed in the regular course of a certified asbestos supervisor's duties. Asbestos workers must have access to certified asbestos supervisors throughout the duration of the project.

(2) The department shall require persons undertaking asbestos projects to provide written notice to the department before the commencement of the project except as provided in RCW 49.26.125. The notice shall include a written description containing such information as the department requires by rule. The department may by rule allow a person to report multiple projects at one site in one report. The department shall by rule establish the procedure and criteria by which a person will be considered to have attempted to meet the prenotification requirement.

(3) The department shall consult with the state fire protection policy board, and may establish any additional policies and procedures for municipal fire department and fire district personnel who clean up sites after fires which have rendered it likely that asbestos has been or will be disturbed or released into the air.

Passed the Senate April 18, 1995.

Passed the House April 11, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 219

[Senate Bill 5445]

TOWING AND IMPOUNDMENT—RESPONSIBILITY OF REGISTERED OWNER—PROCESSING AND HANDLING PROCEDURES REVISED

AN ACT Relating to procedures for handling and processing violations of RCW 46.55.105; and amending RCW 46.20.031, 46.20.289, 46.52.100, 46.55.105, and 46.63.030.

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

Sec. 1. RCW 46.20.031 and 1993 c 501 s 2 are each amended to read as follows:

The department shall not issue a driver's license hereunder:

(1) To any person who is under the age of sixteen years;

(2) To any person whose license has been suspended during such suspension, nor to any person whose license has been revoked, except as provided in RCW 46.20.311;

(3) To any person who has been evaluated by a program approved by the department of social and health services as being an alcoholic, drug addict, alcohol abuser, and/or drug abuser: PROVIDED, That a license may be issued if the department determines that such person has been granted a deferred prosecution, pursuant to chapter 10.05 RCW, or is satisfactorily participating in or has successfully completed an alcohol or drug abuse treatment program approved by the department of social and health services and has established control of his or her alcohol and/or drug abuse problem;

(4) To any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease, and who has not at the time of application been restored to competency by the methods provided by law: PROVIDED, HOWEVER, That no person so adjudged shall be denied a license for such cause if the superior court should find him able to operate a motor vehicle with safety upon the highways during such incompetency;

(5) To any person who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(6) To any person who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

(7) To any person when the department has good and substantial evidence to reasonably conclude that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; subject to review by a court of competent jurisdiction;

(8) To a person when the department has been notified by a court that the person has violated his or her written promise to appear, respond, or comply regarding a notice of infraction issued for a violation of RCW 46.55.105, unless the department has received notice from the court showing that the person has been found not to have committed the violation of RCW 46.55.105, or that the person has paid all monetary penalties owing, including completion of community service, and that the court is satisfied that the person has made restitution as provided by RCW 46.55.105(2).

Sec. 2. RCW 46.20.289 and 1993 c 501 s 1 are each amended to read as follows:

The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(5) or 46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, other than for a notice of a violation of RCW 46.55.105 or a standing, stopping, or parking violation. A suspension under this section takes effect thirty days

after the date the department mails notice of the suspension, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated.

Sec. 3. RCW 46.52.100 and 1994 c 275 s 15 are each amended to read as follows:

Every district court, municipal court, and clerk of superior court shall keep or cause to be kept a record of every traffic complaint, traffic citation, notice of infraction, or other legal form of traffic charge deposited with or presented to the court or a traffic violations bureau, and shall keep a record of every official action by the court or its traffic violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, finding that a traffic infraction has been committed, dismissal of a notice of infraction, and the amount of fine, forfeiture, or penalty resulting from every traffic complaint, citation, or notice of infraction deposited with or presented to the district court, municipal court, superior court, or traffic violations bureau.

The Monday following the conviction, forfeiture of bail, or finding that a traffic infraction was committed for violation of any provisions of this chapter or other law regulating the operating of vehicles on highways, every magistrate of the court or clerk of the court of record in which such conviction was had, bail was forfeited, or the finding made shall prepare and immediately forward to the director of licensing at Olympia an abstract of the record of the court covering the case, which abstract must be certified by the person so required to prepare the same to be true and correct. Report need not be made of any finding involving the illegal parking or standing of a vehicle.

The abstract must be made upon a form or forms furnished by the director and shall include the name and address of the party charged, the number, if any, of the party's driver's or chauffeur's license, the registration number of the vehicle involved if required by the director, the nature of the offense, the date of hearing, the plea, the judgment, whether the offense was an alcohol-related offense as defined in RCW 46.01.260(2), whether bail forfeited, whether the determination that a traffic infraction was committed was contested, and the amount of the fine, forfeiture, or penalty as the case may be.

Every court of record shall also forward a like report to the director upon the conviction of any person of (~~manslaughter or other~~) a felony in the commission of which a vehicle was used.

The failure of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal therefrom.

The director shall keep all abstracts received hereunder at the director's office in Olympia and the same shall be open to public inspection during reasonable business hours.

Venue in all district courts shall be before one of the two nearest district judges in incorporated cities and towns nearest to the point the violation allegedly occurred: PROVIDED, That in counties with populations of one hundred twenty-five thousand or more such cases may be tried in the county seat at the request of the defendant.

It shall be the duty of the officer, prosecuting attorney, or city attorney signing the charge or information in any case involving a charge of driving under the influence of intoxicating liquor or any drug immediately to make request to the director for an abstract of convictions and forfeitures which the director shall furnish.

Sec. 4. RCW 46.55.105 and 1993 c 314 s 1 are each amended 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 and removed at the direction of law enforcement, 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))~~ any other monetary penalty payable under ~~((that))~~ chapter 46.63 RCW, the court shall not consider all monetary penalties as having been paid until the court is satisfied that the person found to have committed the infraction (~~(is also liable for)~~) has made 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 reporting notices of traffic infraction to the department under RCW 46.20.270 and 46.52.100, and for purposes of reporting notices of failure to appear, respond, or comply regarding a notice of traffic infraction to the department under 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.

(5) A notice of infraction for a violation of this section may be filed with a court of limited jurisdiction organized under Title 3, 35, or 35A RCW, or with a violations bureau subject to the court's jurisdiction.

Sec. 5. RCW 46.63.030 and 1994 c 176 s 3 are each amended to read as follows:

(1) A law enforcement officer has the authority to issue a notice of traffic infraction:

- (a) When the infraction is committed in the officer's presence;
- (b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed; or
- (c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the registered owner of the vehicle. The officer shall append to the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been aid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle.

Passed the Senate April 18, 1995.

Passed the House April 7, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 220

[Engrossed Substitute Senate Bill 5503]

TEMPORARY WORKER HOUSING—HEALTH AND SAFETY REGULATION

AN ACT Relating to health and safety regulation for temporary worker housing; amending RCW 70.54.110; adding a new chapter to Title 70 RCW; 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 an inadequate supply of temporary and permanent housing for migrant and seasonal workers in this state. The legislature also finds that unclear, complex regulations related to the development, construction, and permitting of worker housing inhibit the development of this much needed housing. The legislature further finds that as a result, many workers are forced to obtain housing that is unsafe and unsanitary.

Therefore, it is the intent of the legislature to encourage the development of temporary and permanent housing for workers that is safe and sanitary by: Establishing a clear and concise set of regulations for temporary housing; establishing a streamlined permitting and administrative process that will be locally administered and encourage the development of such housing; and by providing technical assistance to organizations or individuals interested in the development of worker housing.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Dwelling unit" means a shelter, building, or portion of a building, that may include cooking and eating facilities, that is:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other sleeping and common-use areas.

(3) "Facility" means a sleeping place, drinking water, toilet, sewage disposal, food handling installation, or other installations required for compliance with this chapter.

(4) "Occupant" means a temporary worker or a person who resides with a temporary worker at the housing site.

(5) "Operator" means a person holding legal title to the land on which temporary worker housing is located. However, if the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the temporary worker housing under a lease or other arrangement.

(6) "Temporary worker" means a person employed intermittently and not residing year-round at the same site.

(7) "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an employer for his or her employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy, and includes "labor camps" under RCW 70.54.110.

NEW SECTION. Sec. 3. This act applies to temporary worker housing that consists of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants.

NEW SECTION. Sec. 4. The department is designated the single state agency responsible for encouraging the development of additional temporary

worker housing, and shall be responsible for coordinating the activities of the various state and local agencies to assure a seamless, nonduplicative system for the development and operation of temporary worker housing.

NEW SECTION. Sec. 5. Temporary worker housing located on a rural worksite, and used for workers employed on the worksite, shall be considered a permitted use at the rural worksite for the purposes of zoning or other land use review processes, subject only to height, setback, and road access requirements of the underlying zone.

NEW SECTION. Sec. 6. The secretary of the department or authorized representative may inspect housing covered by this act to enforce temporary worker housing rules adopted by the state board of health, or when the secretary or representative has reasonable cause to believe that a violation of temporary worker housing rules adopted by the state board of health is occurring or is being maintained. If the buildings or premises are occupied as a residence, a reasonable effort shall be made to obtain permission from the resident. If the premises or building is unoccupied, a reasonable effort shall be made to locate the owner or other person having charge or control of the building or premises and request entry. If consent for entry is not obtained, for whatever reason, the secretary or representative shall have recourse to every remedy provided by law to secure entry.

NEW SECTION. Sec. 7. The department of community, trade, and economic development shall contract with private, nonprofit corporations to provide technical assistance to any private individual or nonprofit organization wishing to construct temporary or permanent worker housing. The assistance may include information on state and local application and approval procedures, information or assistance in applying for federal, state, or local financial assistance, including tax incentives, information on cost-effective housing designs, or any other assistance the department of community, trade, and economic development may deem helpful in obtaining the active participation of private individuals or groups in constructing or operating temporary or permanent worker housing.

NEW SECTION. Sec. 8. By December 1, 1996, the state building code council shall develop a temporary worker housing code, in conformance with the temporary worker housing standards developed under the Washington industrial safety and health act, chapter 49.17 RCW, the rules adopted by the state board of health under RCW 70.54.110, and the following guidelines:

(1) The code shall provide construction standards for shelter and associated facilities that are safe, secure, and capable of withstanding the stresses and loads associated with their designated use, and to which they are likely to be subjected by the elements.

(2) The code shall permit and facilitate designs and formats that allow for maximum affordability, consistent with the provision of decent, safe, and sanitary housing.

(3) In developing the code the council shall consider: (a) The need for dormitory type housing for groups of unrelated individuals; and (b) the need for housing to accommodate families.

(4) The code shall include construction standards for a variety of formats, including, but not limited to: (a) Tents and tent platforms; and (b) hard-shell, single exterior wall structures.

(5) The code shall include standards for temporary worker housing that is to be used only during periods when no auxiliary heat is required.

In developing the temporary worker housing code, it is the intent of the legislature that the building code council make exceptions to the codes listed in RCW 19.27.031, and chapter 19.27A RCW, in keeping with the guidelines set forth in this section.

The building code council shall appoint a technical advisory committee to assist in the development of the temporary worker housing code, which shall include representatives of industries that most frequently supply temporary housing to their employees.

NEW SECTION. Sec. 9. The department shall submit a report to the legislature containing short-term and long-term recommendations for the development of an adequate supply and continuous improvement of temporary worker housing. The report shall include recommendations for optimum roles for state and local administration of temporary worker housing, including strategies for the development of a locally administered application, permitting, and compliance system. The report shall identify incentives for the development of temporary worker housing, including but not limited to:

- (1) Facility design options that are economical and appropriate for the worksite and length of seasonal employment but do not compromise health and safety of workers;
- (2) Streamlined, single-service-point permit application and review process;
- (3) Utilization of manufactured shelter units;
- (4) Appropriate building standards;
- (5) Financial incentives for operators;
- (6) Community-financed temporary worker housing; and
- (7) Shared housing arrangements among operators.

The report shall include recommendations for appropriate compliance strategies.

A preliminary report shall be submitted by December 1, 1995, together with any recommendations for legislation necessary to implement the findings and recommendations of the department at that point.

A final report, including recommendations for legislation, shall be submitted by December 1, 1996.

NEW SECTION. Sec. 10. Any rules adopted under this act pertaining to an employer who is subject to the migrant and seasonal agricultural worker

protection act (96 Stat. 2583; 29 U.S.C. Sec. 1801 et seq.), must comply with the housing provisions of that federal act.

Sec. 11. RCW 70.54.110 and 1990 c 253 s 4 are each amended to read as follows:

The state board of health shall develop rules for labor camps, which shall ~~((include as a minimum))~~ not exceed the standards developed under the Washington industrial safety and health act in chapter 49.17 RCW as relates to ~~((sanitation and))~~ temporary labor camps.

All new housing and new construction together with the land areas appurtenant thereto which shall be started on and after May 3, 1969, and is to be provided by employers, growers, management, or any other persons, for occupancy by workers or by workers and their dependents, in agriculture, shall comply with the rules and regulations of the state board of health pertaining to labor camps. Within sixty days following the effective date of this act, the board shall review all rules it has adopted under this section and modify or repeal any rules that exceed the standards developed under chapter 49.17 RCW.

NEW SECTION. **Sec. 12.** Sections 1 through 10 of this act shall constitute a new chapter in Title 70 RCW.

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.** 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 18, 1995.

Passed the House April 11, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 221

[Senate Bill 5523]

PAYMENT OF COSTS OF INCARCERATION

AN ACT Relating to imposition of costs; amending RCW 10.01.160; and repealing RCW 10.64.130.

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

Sec. 1. RCW 10.01.160 and 1994 c 192 s 1 are each amended to read as follows:

(1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed fifty dollars per day of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision 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 must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

NEW SECTION. Sec. 2. RCW 10.64.130 and 1993 c 355 s 1 are each repealed.

Passed the Senate April 18, 1995.

Passed the House April 4, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 222

[Substitute Senate Bill 5537]

TEACHER ASSESSMENT FOR INITIAL OR RESIDENCY
CERTIFICATION—STUDY, REPORT, AND RECOMMENDATION OF ISSUES

AN ACT Relating to teacher preparation; adding a new section to chapter 28A.410 RCW; and repealing RCW 28A.305.230, 28A.305.240, 28A.305.245, 28A.305.250, 28A.410.030, 28A.415.290, 28B.35.380, and 28B.40.380.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.410 RCW to read as follows:

Not later than January 1, 1997, the state board of education shall study, report, and make recommendations to the legislature on the following issues regarding teacher assessment for initial or residency certification:

(1) How an individual assessment would be linked to state board-adopted, performance-based program approval standards;

(2) How an individual assessment would be linked to the performance-based public education system under RCW 28A.630.885; and

(3) Whether, in lieu of requiring the assessment for initial or residency certification, the assessment should be required as a diagnostic tool and the results used for professional growth purposes while the teacher holds the residency certificate.

In conducting this study, the state board shall take into consideration any recommendations from the board's professional education advisory committee and the Washington advisory council for professional teaching standards.

Any recommendation to implement a teacher assessment system, including funding support, must be approved by the legislature before such implementation occurs.

NEW SECTION. Sec. 2. The following acts or parts of acts are each repealed:

- (1) RCW 28A.305.230 and 1985 c 419 s 1;
- (2) RCW 28A.305.240 and 1990 c 33 s 268 & 1987 c 525 s 217;
- (3) RCW 28A.305.245 and 1991 c 259 s 3;
- (4) RCW 28A.305.250 and 1990 c 33 s 269, 1989 c 11 s 4, & 1987 c 525 s 226;
- (5) RCW 28A.410.030 and 1993 c 336 s 801, 1991 c 116 s 21, & 1987 c 525 s 203;
- (6) RCW 28A.415.290 and 1993 c 336 s 406;
- (7) RCW 28B.35.380 and 1977 ex.s. c 169 s 60; and
- (8) RCW 28B.40.380 and 1977 ex.s. c 169 s 80, 1975 1st ex.s. c 275 s 147, 1969 ex.s. c 176 s 155, & 1969 ex.s. c 223 s 28B.40.380.

Passed the Senate April 18, 1995.
 Passed the House April 13, 1995.
 Approved by the Governor May 3, 1995.
 Filed in Office of Secretary of State May 3, 1995.

CHAPTER 223

[Engrossed Substitute Senate Bill 5662]

PERFORMANCE SECURITY FOR METALS MINING AND MILLING—CLARIFICATION OF AUTHORITY OF DEPARTMENT OF ECOLOGY AND DEPARTMENT OF NATURAL RESOURCES

AN ACT Relating to clarifying the existing authority of the department of ecology and the department of natural resources to require performance security for metals mining and milling operations; and amending RCW 78.56.110, 78.56.120, and 78.44.087.

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

Sec. 1. RCW 78.56.110 and 1994 c 232 s 11 are each amended to read as follows:

(1) The department of ecology (~~and the department of natural resources~~) shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to (~~both agencies~~) the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

- (a) Bank letters of credit (~~acceptable to both agencies~~);
- (b) A cash deposit;
- (c) Negotiable securities (~~acceptable to both agencies~~);
- (d) An assignment of a savings account;
- (e) A savings certificate in a Washington bank; or
- (f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW (~~and acceptable to both agencies~~).

The (~~agencies~~) department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

- (a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related (~~rules~~) environmental protection ordinances and permit conditions established by (~~state and~~) local government (~~with respect to those operations as defined in RCW 78.44.031(17) and the construction, operation, reclamation, and closure of a metals mining and milling operation~~) when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology ((and the department of natural resources)); and

~~((e))~~ (d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology ~~((and the department of natural resources shall jointly))~~ may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology ~~((and the department of natural resources, acting jointly,))~~ may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the ~~((agencies))~~ department shall ~~((jointly))~~ review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology ~~((and the department of natural resources)).~~ Liability under the performance security may be released only upon written notification by the department of ecology ~~((, with the concurrence of the department of natural resources)).~~

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology ~~((and the department of natural resources)).~~ At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by ~~((either agency))~~ the department of ecology to comply with the obligations.

(7) Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However, a single performance security, when acceptable to both the department of ecology and the department of natural resources, may be utilized by both agencies to satisfy the requirements of this section and RCW 78.44.087.

Sec. 2. RCW 78.56.120 and 1994 c 232 s 12 are each amended to read as follows:

The department of ecology may, with staff, equipment, and material under its control, or by contract with others, remediate or mitigate any impact of a metals mining and milling operation when it finds that the operator or permit holder has failed to comply with relevant statutes, rules, or permits, and the

operator or permit holder has failed to take adequate or timely action to rectify these impacts.

If the department intends to remediate or mitigate such impacts, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted pursuant to ~~((chapter 232, Laws of 1994))~~ RCW 78.56.110. If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

The department may proceed at any time after issuing the order to submit performance security to remediate or mitigate adverse impacts.

The department shall keep a record of all expenses incurred in carrying out any remediation or mitigation activities authorized under this section, including:

- (1) Remediation or mitigation;
- (2) A reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized; and
- (3) Administrative and legal expenses related to remediation or mitigation.

The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the department of ecology, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section.

~~((If the department of natural resources finds that reclamation has not occurred according to the standards required under chapter 78.44 RCW in a metals mining and milling operation, then the department of natural resources may cause reclamation to occur pursuant to RCW 78.44.240. Upon approval of the department of ecology, the department of natural resources may reclaim part or all of the metals mining and milling operation using that portion of the surety posted pursuant to chapter 232, Laws of 1994 that has been identified for reclamation.))~~

Sec. 3. RCW 78.44.087 and 1994 c 232 s 23 are each amended to read as follows:

(1) The department shall not issue a reclamation permit until the applicant has deposited with the department an acceptable performance security on forms prescribed and furnished by the department. A public or governmental agency shall not be required to post performance security nor shall a permit holder be required to post surface mining performance security with more than one state or local agency.

(2) This performance security may be:

- ~~((1))~~ (a) Bank letters of credit acceptable to the department;
- ~~((2))~~ (b) A cash deposit;

~~((3))~~ (c) Negotiable securities acceptable to the department;

~~((4))~~ (d) An assignment of a savings account;

~~((5))~~ (e) A savings certificate in a Washington bank on an assignment form prescribed by the department;

~~((6))~~ (f) Assignments of interests in real property within the state of Washington; or

~~((7))~~ (g) A corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under Title 48 RCW and authorized by the department.

(3) The performance security shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules adopted under it.

(4) The department shall have the authority to determine the amount of the performance security using a standardized performance security formula developed by the department. The amount of the security shall be determined by the department and based on the estimated costs of completing reclamation according to the approved reclamation plan or minimum standards and related administrative overhead for the area to be surface mined during (a) the next twelve-month period, (b) the following twenty-four months, and (c) any previously disturbed areas on which the reclamation has not been satisfactorily completed and approved.

(5) The department may increase or decrease the amount of the performance security at any time to compensate for a change in the disturbed area, the depth of excavation, a modification of the reclamation plan, or any other alteration in the conditions of the mine that affects the cost of reclamation. The department may, for any reason, refuse any performance security not deemed adequate.

(6) Liability under the performance security shall be maintained until reclamation is completed according to the approved reclamation plan to the satisfaction of the department unless released as hereinafter provided. Liability under the performance security may be released only upon written notification by the department. Notification shall be given upon completion of compliance or acceptance by the department of a substitute performance security. The liability of the surety shall not exceed the amount of security required by this section and the department's reasonable legal fees to recover the security.

(7) Any interest or appreciation on the performance security shall be held by the department until reclamation is completed to its satisfaction. At such time, the interest shall be remitted to the permit holder; except that such interest or appreciation may be used by the department to effect reclamation in the event that the permit holder fails to comply with the provisions of this chapter and the costs of reclamation exceed the face value of the performance security.

(8) Except as provided in this section, no other state agency or local government shall require performance security for the purposes of surface mine reclamation and only one agency of government shall require and hold the

performance security. The department may enter into written agreements with federal agencies in order to avoid redundant bonding of surface mines straddling boundaries between federally controlled and other lands within Washington state.

~~((The department and the department of ecology shall jointly require performance security for metals mining and milling operations regulated under chapter 232, Laws of 1994.))~~

Passed the Senate April 19, 1995.

Passed the House April 4, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 224

[Senate Bill 5718]

FUND-RAISING FOR SUPPORT OF HATCHERIES

AN ACT Relating to fund-raising on state property to benefit public fish and wildlife programs; and adding a new section to chapter 75.08 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 75.08 RCW to read as follows:

The manager of a state fish hatchery operated by the department of fish and wildlife may allow nonprofit volunteer groups affiliated with the hatchery to undertake projects to raise donations, gifts, and grants that enhance support for the hatchery or activities in the surrounding watershed that benefit the hatchery. The manager may provide agency personnel and services, if available, to assist in the projects and may allow the volunteer groups to conduct activities on the grounds of the hatchery.

The director of the department of fish and wildlife shall encourage and facilitate arrangements between hatchery managers and nonprofit volunteer groups and may establish guidelines for such arrangements.

Passed the Senate April 19, 1995.

Passed the House April 5, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 225

[Engrossed Senate Bill 5962]

DAIRY PRODUCTS—DEVELOPMENT OF PROPOSED PENALTIES FOR VIOLATIONS—CONTAINERS

AN ACT Relating to dairy products; amending RCW 15.36.121; and creating a new section.

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

NEW SECTION. Sec. 1. The dairy inspection program advisory committee created by RCW 15.36.561 shall develop a proposal to impose a civil penalty that would be in lieu of a degrade or summary suspension for violations of the pasteurized milk ordinance. The committee shall inquire as to the acceptability of the proposed civil penalty authority with the federal food and drug administration, with regulatory agencies that implement the requirements of the pasteurized milk ordinance in states to which milk produced in Washington state is shipped, and with other public and private organizations that may be affected by the issue. The committee shall provide a written report containing its conclusions and recommendations to the house of representatives and senate committees having jurisdiction over milk quality issues by December 15, 1995.

Sec. 2. RCW 15.36.121 and 1994 c 143 s 210 are each amended to read as follows:

Except as permitted in this section, no milk producer or distributor shall transfer milk or milk products from one container to another on the street, or in any vehicle, or store, or in any place except a bottling or milk room especially used for that purpose.

Milk and milk products sold in the distributor's containers in quantities ~~((less than))~~ of one gallon or less shall be delivered in standard milk bottles or in single-service containers. It shall be unlawful for hotels, soda fountains, restaurants, groceries, hospitals, and similar establishments to sell or serve any milk or milk products except in the individual original container in which it was received from the distributor or from a bulk container equipped with an approved dispensing device: **PROVIDED**, That this requirement shall not apply to cream or milk consumed on the premises in serving sizes not to exceed two hundred thirty-six milliliters or one-half pint, which may be served from the original bottle or from a dispenser approved for such service.

It shall be unlawful for any hotel, soda fountain, restaurant, grocery, hospital, or similar establishment to sell or serve any milk or milk product which has not been maintained, while in its possession, at a temperature of forty-five degrees Fahrenheit or less. If milk or milk products are stored in water for cooling, the pouring lip of the container shall not be submerged.

It shall be the duty of all persons to whom milk or milk products are delivered to clean thoroughly the containers in which such milk or milk products are delivered before returning such containers. Apparatus, containers, equipment, and utensils used in the handling, storage, processing, or transporting of milk or milk products shall not be used for any other purpose without the permission of the director.

The delivery of milk or milk products to and the collection of milk or milk products containers from residences in which cases of communicable disease transmissible through milk supplies exists shall be subject to the special requirements of the health officer.

Passed the Senate April 19, 1995.
 Passed the House April 4, 1995.
 Approved by the Governor May 3, 1995.
 Filed in Office of Secretary of State May 3, 1995.

CHAPTER 226

[Engrossed Second Substitute Senate Bill 5342]

RURAL NATURAL RESOURCES IMPACT AREAS—RECOVERY PROGRAM

AN ACT Relating to economic and employment impact of natural resources harvest variation in rural communities; amending RCW 43.31.601, 43.31.611, 43.31.621, 43.31.641, 50.22.090, 43.31.651, 43.63A.600, 43.63A.440, 43.160.076, 28B.50.030, 28B.50.258, 28B.50.262, 28B.80.570, 28B.80.575, 28B.80.580, 28B.80.585, 43.17.065, 43.20A.750, 43.211.010, 43.168.020, 43.168.140, 43.210.110, 50.12.270, 50.70.010, and 50.70.020; amending 1993 c 316 s 5 (uncodified); amending 1993 c 320 s 10 (uncodified); amending 1993 c 316 s 7 (uncodified); amending 1993 c 320 s 11 (uncodified); reenacting and amending RCW 43.160.020 and 43.160.200; adding a new section to chapter 43.63A RCW; adding new sections to chapter 43.131 RCW; creating new sections; repealing RCW 43.31.661 and 43.31.631; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 43.31.601 and 1992 c 21 s 2 are each amended to read as follows:

For the purposes of RCW 43.31.601 through 43.31.661:

(1) (~~"Board" means the economic recovery coordination board;~~

~~2)) "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: ((+)) (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((+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)).~~

(2)(a) "Rural natural resources impact area" means:

(i) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in (b) of this subsection; or

(ii) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in (b) of this subsection.

(b) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(i) A lumber and wood products employment location quotient at or above the state average;

(ii) A commercial salmon fishing employment location quotient at or above the state average;

(iii) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(iv) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(v) An unemployment rate twenty percent or more above the state average.

The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

Sec. 2. RCW 43.31.611 and 1993 c 316 s 1 are each amended to read as follows:

(1) The governor shall appoint a ~~((timber recovery))~~ rural community assistance coordinator. The coordinator shall coordinate the state and federal economic and social programs targeted to ~~((timber))~~ rural natural resources 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)) rural community assistance task force and directing staff associated with the task force.

~~((c))~~ (b) Coordinating and maximizing the impact of state and federal assistance to ((timber)) rural natural resources impact areas.

~~((d))~~ (c) Coordinating and expediting programs to assist ((timber)) rural natural resources impact areas.

~~((e))~~ (d) Providing the legislature with a status and impact report on the ((timber recovery)) rural community assistance program in January ((1992)) 1996.

(3) To assist in carrying out the duties set out under this section, the coordinator shall consult with the Washington state rural development council and may appoint an advisory body that has representation from local governments and natural resources interest groups representing impacted rural communities.

(4) This section shall expire June 30, ((1995)) 1997.

Sec. 3. RCW 43.31.621 and 1994 c 264 s 18 are each amended to read as follows:

(1) There is established the agency (~~(timber)~~) rural community assistance task force. The task force shall be chaired by the (~~((timber-recovery))~~) rural community assistance 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 community, trade, and economic development, employment security department, department of social and health services, state board for community and technical colleges, (~~((state))~~) work force training and education coordinating board, (~~((or its replacement entity,))~~) department of natural resources, department of transportation, state energy office, department of fish and wildlife, University of Washington center for international trade in forest products, department of agriculture, and department of ecology. The task force shall solicit and consider input from the rural development council in coordinating agency programs targeted to rural natural resources impacted communities. The task force may consult and enlist the assistance of the following: The higher education coordinating board, University of Washington college of forest resources, University of Washington school of fisheries, Washington State University school of forestry, Northwest policy center, state superintendent of public instruction, Washington state labor council, the Evergreen partnership, Washington state association of counties, and (~~((rural-development-council))~~) others as needed.

(2) The task force, in conjunction with the rural development council, shall undertake a study to determine whether additional communities and industries are impacted, or are likely to be impacted, by salmon preservation and recovery efforts. The task force shall consider possible impacts in the following industries and associated communities: Barge transportation, irrigation dependent agriculture, food processing, aluminum, charter recreational fishing, boatbuilding, and other sectors suggested by the task force. The task force shall report its findings and recommendations to the legislature by January 1996.

(3) This section shall expire June 30, (~~((1995))~~) 1997.

Sec. 4. RCW 43.31.641 and 1993 c 280 s 50 are each amended to read as follows:

The department of community, trade, and economic development, as a member of the agency (~~(timber)~~) rural community assistance 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. The department shall 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 community, trade, and economic development shall use funds appropriated for this section for contracts and for no more than two additional staff positions.

Sec. 5. RCW 50.22.090 and 1993 c 316 s 10 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, 1994))~~ rural natural resources impact areas, defined in RCW 43.31.601, and determined by the office of financial management and the employment security department. 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 1, ~~((1995))~~ 1997, but for claims established on or before

July 1, ~~((1995))~~ 1997, weeks of unemployment occurring after July 1, ~~((1995))~~ 1997, shall be compensated as provided in this section.

(b) The total additional benefit amount shall be 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 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 two years after March 26, 1992, for individuals who become eligible as a result of chapter 47, Laws of 1992.

(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) Notwithstanding the provisions of (b) of this subsection, individuals enrolled in prerequisite remedial education for a training program expected to last at least one year will be entitled to up to thirteen additional weeks of benefits which shall not count toward the total in (b) of this subsection.

(e) The weekly benefit amount shall be calculated as specified in RCW 50.22.040.

~~((e))~~ (f) 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))~~ (g) The amendments in chapter 316, Laws of 1993 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))~~ rural natural resources impact area defined in RCW 43.31.601 and determined by the office of financial management and the employment security department; or

(ii) During his or her base year, earned wages in at least six hundred eighty hours in either 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 or the fishing industry assigned the standard

industrial classification code "0912". 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; and

(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)~~ The provisions of RCW 50.22.010(10) shall not apply to anyone who establishes eligibility for additional benefits under this section and whose benefit year ends after January 1, 1994. These individuals will have the option of remaining on the original claim or filing a new claim.

Sec. 6. 1993 c 316 s 5 (uncodified) is amended to read as follows:

(1) For the period beginning July 1, 1991, and ending June 30, ~~((1995))~~ 1997, in ~~((timber))~~ rural natural resources impact areas the public works board may award low-interest or interest-free loans to local governments for construction of new or expanded public works facilities that stimulate economic growth or diversification.

(2) For the purposes of this section and section 27, chapter 314, Laws of 1991:

(a) "Public facilities" means bridge, road and street, domestic water, sanitary sewer, and storm sewer systems.

(b) ~~(("Timber impact area" means:~~

~~(i) 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: (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; or~~

~~(ii) 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 (b)(i) of this subsection.~~

~~(3))~~ "Rural natural resources impact area" means:

(i) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (3) of this section; or

(ii) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (3) of this section.

(3) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

(4) 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))~~ (5) The board may make such loans irrespective of the annual loan cycle and reporting required in RCW 43.155.070.

Sec. 7. 1993 c 320 s 10 (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, ~~((1995))~~ 1997.

Sec. 8. 1993 c 316 s 7 (uncodified) is amended to read as follows:
RCW 43.160.200 expires June 30, ~~((1995))~~ 1997.

Sec. 9. 1993 c 320 s 11 (uncodified) is amended to read as follows:
RCW 43.160.210 shall take effect ~~((July 1, 1995))~~ June 30, 1997.

Sec. 10. RCW 43.31.651 and 1993 c 280 s 51 are each amended to read as follows:

The department of community, trade, and economic development as a part of the agency (~~((timber))~~ rural community assistance 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))~~ rural natural resources impact areas.

NEW SECTION. **Sec. 11.** A new section is added to chapter 43.63A RCW to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Dislocated forest products worker" means a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(2) "Forest products worker" means a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in 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 these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c).

(3) "Dislocated salmon fishing worker" means a salmon products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(4) "Salmon fishing worker" means a worker in the salmon industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational

harvesting of salmon including buying and processing salmon. The commissioner may adopt rules further interpreting these definitions.

Sec. 12. RCW 43.63A.600 and 1994 c 114 s 1 are each amended to read as follows:

(1) The department of community, trade, and economic development, as a member of the agency (~~(timber)~~) rural community assistance 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 and salmon 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)~~) rural community assistance recovery coordinator to develop the program in (~~(timber)~~) rural natural resources impact areas. Organizations eligible to receive grant funds for distribution under the program are those organizations that are eligible to receive assistance through the Washington housing trust fund. The department shall disburse the funds to eligible local organizations as grants. The local organizations shall use the funds to make grants or loans as specified in RCW 43.63A.600 through 43.63A.640. If funds are disbursed as loans, the local organization shall establish a revolving grant and loan fund with funds received as loan repayments and shall continue to make grants or loans or both grants and loans from funds received as loan repayments to dislocated forest products and dislocated salmon fishing workers eligible under the provisions of RCW 43.63A.600 through 43.63A.640 and to other persons residing in (~~(timber)~~) rural natural resources impact areas who meet the requirements of RCW 43.63A.600 through 43.63A.640.

(2) The goals of the program are to:

(a) Provide temporary emergency mortgage loans or rental assistance grants or loans on behalf of dislocated forest products and dislocated salmon fishing workers in (~~(timber)~~) rural natural resources impact areas who are unable to make mortgage, property tax, or rental payments on their permanent residences and are subject to immediate eviction for nonpayment of mortgage installments, property taxes, or nonpayment of rent;

(h) Prevent the dislocation of individuals and families from their permanent residences and their communities; and

(c) Maintain economic and social stability in (~~(timber)~~) rural natural resources impact areas.

Sec. 13. RCW 43.63A.440 and 1993 c 280 s 74 are each amended to read as follows:

((+)) 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, state, and private lands and reduction of salmon fishing caused by efforts to maintain the long-term viability of salmon stocks. 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. 14. RCW 43.160.020 and 1993 c 320 s 1 and 1993 c 280 s 55 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) "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 community, trade, and economic development.

(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, 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)~~ Rural natural resources 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))~~ A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (12) of this section; or

(b) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (12) of this section.

~~((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.))~~

(12) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

Sec. 15. RCW 43.160.076 and 1993 c 320 s 5 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)~~) rural natural resources 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)~~) rural natural resources 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)~~) rural natural resources impact areas.

Sec. 16. RCW 43.160.200 and 1993 c 320 s 7 and 1993 c 316 s 4 are each reenacted and 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)~~) rural natural resources impact areas that demonstrate, to the satisfaction of the board, the local economy's dependence on the forest products (~~(industry)~~) and salmon fishing industries.

(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. 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. 17. RCW 28B.50.030 and 1992 c 21 s 5 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise, the term:

(1) "System" shall mean the state system of community and technical colleges, which shall be a system of higher education.

(2) "Board" shall mean the work force training and education coordinating board.

(3) "College board" shall mean the state board for community and technical colleges created by this chapter.

(4) "Director" shall mean the administrative director for the state system of community and technical colleges.

(5) "District" shall mean any one of the community and technical college districts created by this chapter.

(6) "Board of trustees" shall mean the local community and technical college board of trustees established for each college district within the state.

(7) "Occupational education" shall mean that education or training that will prepare a student for employment that does not require a baccalaureate degree.

(8) "K-12 system" shall mean the public school program including kindergarten through the twelfth grade.

(9) "Common school board" shall mean a public school district board of directors.

(10) "Community college" shall include those higher education institutions that conduct education programs under RCW 28B.50.020.

(11) "Technical college" shall include those higher education institutions with the sole mission of conducting occupational education, basic skills, literacy programs, and offering on short notice, when appropriate, programs that meet specific industry needs. The programs of technical colleges shall include, but not be limited to, continuous enrollment, competency-based instruction, industry-experienced faculty, curriculum integrating vocational and basic skills education, and curriculum approved by representatives of employers and labor. For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute.

(12) "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate. However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate, nor shall "adult education" include education or instruction provided by any four year public institution of higher education.

(13) "Dislocated forest product worker" shall mean a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a (~~timber~~) rural natural resources impact area.

(14) "Forest products worker" shall mean a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in 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 these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c).

(15) "Dislocated salmon fishing worker" means a salmon products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(16) "Salmon fishing worker" means a worker in the salmon industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of salmon including buying and processing salmon. The commissioner may adopt rules further interpreting these definitions.

(17) "~~(Timber)~~ Rural natural resources impact area" (~~shall~~) 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~~) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (18) of this section; or

(b) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (18) of this section.

(~~(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.~~)

(18) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

Sec. 18. RCW 28B.50.258 and 1991 c 315 s 16 are each amended to read as follows:

To the extent that funds are specifically appropriated therefor, the state board for community and technical colleges (~~(education)~~) shall provide training and retraining in (~~(timber)~~) rural natural resources impact areas as follows:

(1) Disbursement of funds to individual community colleges for supplemental slots in cases where enrollment demand exceeds allocation;

(2) Pilot projects for innovative approaches to literacy and employment training. Pilot projects may include, but are not limited to:

(a) Training for cranberry industry research, coordinated by the Washington State University coastal research unit, Long Beach;

(b) Training through Grays Harbor Community College for dislocated forest products workers to fill positions as safety training and vessel inspectors. They shall contract with those organizations deemed appropriate to carry out this program;

(c) Training through Skagit Valley Community College for dislocated forest products workers in natural resources technical programs in stream enhancement, including waters upstream or downstream as well as adjacent to state lands; water quality enhancement; irrigation repair; and the building of shellfish beds;

(d) Training for agricultural development, diversification, marketing, and processing programs in (~~(timber)~~) rural natural resources impact areas.

Nothing in subsection (2) of this section shall be construed to provide priority for the projects listed in subsection (2) of this section.

For the purposes of this section, the number of full-time equivalent students to be served during any biennium shall be determined by the applicable omnibus

appropriations act and shall be in addition to the community college enrollment level funded by the applicable omnibus appropriations act.

Sec. 19. RCW 28B.50.262 and 1994 c 282 s 3 are each amended to read as follows:

The state board for community and technical colleges shall develop, in conjunction with the center for international trade in forest products, the Washington State University wood materials and engineering laboratory, and the department of community, trade, and economic development, a competency-based technical degree program in wood product manufacturing and wood technology and make it available in every college district that serves a ((timber)) rural natural resources impact area.

Sec. 20. RCW 28B.80.570 and 1992 c 21 s 6 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28B.80.575 through 28B.80.585.

(1) "Board" means the higher education coordinating board.

(2) "Dislocated forest products worker" means a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a ((timber)) rural natural resources impact area.

(3) "Forest products worker" means a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in 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 these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c).

(4) "Dislocated salmon fishing worker" means a salmon products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(5) "Salmon fishing worker" means a worker in the salmon industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of salmon including buying and processing salmon. The commissioner may adopt rules further interpreting these definitions.

(6) "~~(Timber)~~ Rural natural resources 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))~~ A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (7) of this section; or
(b) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (7) of this section.

~~((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.))~~

(7) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishin employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles

of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

Sec. 21. RCW 28B.80.575 and 1991 c 315 s 19 are each amended to read as follows:

The board shall administer a program designed to provide upper division higher education opportunities to dislocated forest products workers, their spouses, and others in ~~((timber))~~ rural natural resources impact areas. In administering the program, the board shall have the following powers and duties:

(1) Distribute funding for institutions of higher education to service placebound students in the ~~((timber))~~ rural natural resources impact areas meeting the following criteria, as determined by the employment security department: (a) A lumber and wood products employment location quotient at or above the state average; (b) a commercial salmon fishing employment location quotient at or above the state average; (c) a direct lumber and wood products job loss of one hundred positions or more; ~~((and (e)))~~ (d) projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and (e) an annual unemployment rate twenty percent above the state average;

(2) Appoint an advisory committee to assist the board in program design and future project selection;

(3) Monitor the program and report on student progress and outcome; and

(4) Report to the legislature by December 1, 1993, on the status of the program.

Sec. 22. RCW 28B.80.580 and 1993 sp.s. c 18 s 34 are each amended to read as follows:

(1) The board shall contract with institutions of higher education to provide upper division classes to serve additional placebound students in the ~~((timber))~~ rural natural resources impact areas meeting the following criteria, as determined by the employment security department: (a) A lumber and wood products employment location quotient at or above the state average; (b) a commercial salmon fishing employment location quotient at or above the state average; (c) a direct lumber and wood products job loss of one hundred positions or more; ~~((and (e)))~~ (d) projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and (e) an annual unemployment rate twenty percent above the state average; and which are not served by an existing state-funded upper division degree program. The number of full-time equivalent students served in this manner shall be determined by the applicable omnibus appropriations act. The board may direct that all the full-time equivalent enrollments be served in one of the eligible ~~((timber))~~ rural natural resources impact areas if it should determine that this would be the most viable manner of establishing the program and using available resources. The institutions shall utilize telecommunication technology, if available, to carry out the purposes of this section. Subject to the limitations of RCW 28B.15.910, the institutions

providing the service may waive all or a portion of the tuition, and service and activities fees for dislocated forest products workers or their unemployed spouses enrolled as one of the full-time equivalent students allocated to the college under this section.

(2) Unemployed spouses of eligible dislocated forest products workers may participate in the program, but tuition and fees may be waived under the program only for the worker or the spouse and not both.

(3) Subject to the limitations of RCW 28B.15.910, for any eligible participant, all or a portion of tuition may be waived for a maximum of four semesters or six quarters within a two-year time period. The participant must be enrolled for a minimum of ten credits per semester or quarter.

Sec. 23. RCW 28B.80.585 and 1991 c 315 s 21 are each amended to read as follows:

Dislocated forest products and salmon products workers and their spouses shall receive priority for attendance in upper division courses allocated under RCW 28B.80.580. Remaining allocations may be distributed to others in the ~~((timber))~~ rural natural resources impact area.

Sec. 24. RCW 43.17.065 and 1993 c 280 s 37 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 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))~~ rural natural resources 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))~~ rural community assistance 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. 25. RCW 43.20A.750 and 1993 c 280 s 38 are each amended to read as follows:

(1) The department of social and health services shall help families and workers in ~~((timber))~~ rural natural resources 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))~~ rural community assistance 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))~~ rural natural resources 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))~~ agency rural community assistance task force 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))~~ Rural natural resources 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)) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (6) of this section; or

(b) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (6) of this section.

~~((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.))~~

(6) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

Sec. 26. RCW 43.21J.010 and 1993 c 516 s 2 are each amended to read as follows:

(1) It is the intent of this chapter to provide financial resources to make substantial progress toward: (a) Implementing the Puget Sound water quality management plan and other watershed-based management strategies and plans; (b) ameliorating degradation to watersheds; and (c) keeping and creating stable, environmentally sound, good wage employment in Washington state. The legislature intends that employment under this chapter is not to result in the displacement or partial displacement, whether by the reduction of hours of nonovertime work, wages, or other employment benefits, of currently employed workers, including but not limited to state civil service employees, or of currently or normally contracted services.

(2) It is the purpose of this chapter to:

(a) Implement clean water, forest, and habitat restoration projects that will produce measurable improvements in water and habitat quality, that rate highly when existing environmental ranking systems are applied, and that provide economic stability.

(b) Facilitate the coordination and consistency of federal, state, tribal, local, and private water and habitat protection and enhancement programs in the state's watersheds.

(c) Fund necessary projects for which a public planning process has been completed.

(d) Provide immediate funding to create jobs and training for environmental restoration and enhancement jobs for unemployed workers and displaced workers in impact areas, especially (~~timber-dependent~~) rural natural resources-dependent communities.

(3) For purposes of this chapter "impact areas" means: (a) Distressed counties as defined in RCW 43.165.010(3)(a); (b) subcounty areas in those counties not covered under (a) of this subsection that are (~~timber~~) rural natural resources impact areas as defined in RCW 43.31.601; (c) urban subcounty areas as defined in RCW 43.165.010(3)(c); and (d) areas that the task force determines are likely to experience dislocations in the near future from downturns in natural resource-based industries.

(4) For purposes of this chapter, "high-risk youth" means youth eligible for Washington conservation corps programs under chapter 43.220 RCW or Washington service corps programs under chapter 50.65 RCW.

(5) For purposes of this chapter, "dislocated forest products worker" has the meaning set forth in RCW 50.70.010.

(6) For purposes of this chapter, "task force" means the environmental enhancement and job creation task force created under RCW 43.21J.030.

Sec. 27. RCW 43.168.020 and 1993 c 280 s 56 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 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)) rural natural resources 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 development 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. 28. RCW 43.168.140 and 1991 c 314 s 20 are each amended to read as follows:

Any funds appropriated by the legislature to the development loan fund for purposes of the timber recovery act shall be used for development loans in ((timber)) rural natural resources impact areas as defined in RCW 43.31.601.

Sec. 29. RCW 43.210.110 and 1994 c 284 s 7 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 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)) rural natural resources 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 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. The small business export finance assistance center and the project are authorized to charge reasonable fees for services and products provided and to expend the proceeds for the particular purposes for which they were collected.

(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.

Sec. 30. RCW 50.12.270 and 1991 c 315 s 3 are each amended to read as follows:

(1) Subject to the availability of state or federal funds, the employment security department, as a member of the agency ((timber)) rural community assistance task force ((and in consultation with the economic recovery coordination board)), shall consult with and may subcontract with local educational institutions, local businesses, local labor organizations, local associate development organizations, local private industry councils, local social service organizations, and local governments in carrying out a program of training and services, including training through the ((self-employment and enterprise development (SEED))) entrepreneurial training program, for dislocated workers in ((timber)) rural natural resources impact areas.

(2) The department shall conduct a survey to determine the actual future employment needs and jobs skills in ((timber)) rural natural resources impact areas.

(3) The department shall coordinate the services provided in this section with all other services provided by the department and with the other economic recovery efforts undertaken by state and local government agencies on behalf of the ~~((timber))~~ rural natural resources impact areas.

(4) The department shall make every effort to procure additional federal and other moneys for the efforts enumerated in this section.

(5) For the purposes of this section, ~~((“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: (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))~~ “Rural natural resources impact area” means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (6) of this section; or

(b) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (6) of this section.

(6) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishin employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average.

The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

Sec. 31. RCW 50.70.010 and 1992 c 21 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) "Department" means the employment security department.

(2) "Dislocated forest products worker" means a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a ~~((timber))~~ rural natural resources impact area.

(3) "Forest products worker" means a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in 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 these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c).

(4) "Dislocated salmon fishing worker" means a salmon products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(5) "Salmon fishing worker" means a worker in the salmon industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of salmon including buying and processing salmon. The commissioner may adopt rules further interpreting these definitions.

(6) "Program" means the employment and career orientation program for dislocated forest products workers administered by the employment security department in conjunction with the department of natural resources.

~~((5))~~ (7) "Enrollee" means any person enrolled in the program.

~~((6))~~ (8) "Project" means the natural resource worker project.

~~((7))~~ (9) "((Timber)) Rural natural resources 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)) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (10) of this section; or~~

(b) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (10) of this section.

~~((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:))~~

(10) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

Sec. 32. RCW 50.70.020 and 1991 c 315 s 6 are each amended to read as follows:

It is the purpose of this chapter to establish programs that offer dislocated forest and salmon products workers, in ~~((timber))~~ rural natural resources impact areas, opportunities for forest-related employment that utilizes their unique skills. Employment under the program shall not result in the displacement or partial displacement of currently employed workers. This includes, but is not limited to, state employees or currently or normally contracted service employees.

NEW SECTION. Sec. 33. The following acts or parts of acts are each repealed:

- (1) RCW 43.31.661 and 1991 c 314 s 10; and
- (2) RCW 43.31.631 and 1993 c 316 s 3 & 1991 c 314 s 6.

NEW SECTION. Sec. 34. A new section is added to chapter 43.131 RCW to read as follows:

The rural natural resources impact area programs shall be terminated on June 30, 1998, as provided in section 35 of this act.

NEW SECTION. Sec. 35. 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) RCW 43.31.601 and 1995 c . . . s 1 (section 1 of this act), 1992 c 21 s 2, & 1991 c 314 s 2;
- (2) RCW 43.31.641 and 1995 c . . . s 4 (section 4 of this act), 1993 c 280 s 50, & 1991 c 314 s 7;
- (3) RCW 50.22.090 and 1995 c . . . s 5 (section 5 of this act), 1993 c 316 s 10, 1992 c 47 s 2, & 1991 c 315 s 4;
- (4) 1995 c . . . s 6 (section 6 of this act) & 1993 c 316 s 5 (uncodified);
- (5) RCW 43.31.651 and 1995 c . . . s 10 (section 10 of this act), 1993 c 280 s 51, & 1991 c 314 s 9;
- (6) RCW 43.63A.— and 1995 c . . . s 11 (section 11 of this act);
- (7) RCW 43.63A.600 and 1995 c . . . s 12 (section 12 of this act), 1994 c 114 s 1, 1993 c 280 s 77, & 1991 c 315 s 23;
- (8) RCW 43.63A.440 and 1995 c . . . s 13 (section 13 of this act), 1993 c 280 s 74, & 1989 c 424 s 7;
- (9) RCW 43.160.200 and 1995 c . . . s 16 (section 16 of this act), 1993 c 320 s 7, 1993 c 316 s 4, & 1991 c 314 s 23;
- (10) RCW 28B.50.258 and 1995 c . . . s 18 (section 18 of this act) & 1991 c 315 s 16;
- (11) RCW 28B.50.262 and 1995 c . . . s 19 (section 19 of this act) & 1994 c 282 s 3;
- (12) RCW 28B.80.570 and 1995 c . . . s 20 (section 20 of this act), 1992 c 21 s 6, & 1991 c 315 s 18;
- (13) RCW 28B.80.575 and 1995 c . . . s 21 (section 21 of this act) & 1991 c 315 s 19;

(14) RCW 28B.80.580 and 1995 c . . . s 22 (section 22 of this act), 1993 sp.s. c 18 s 34, 1992 c 231 s 31, & 1991 c 315 s 20;

(15) RCW 28B.80.585 and 1995 c . . . s 23 (section 23 of this act) & 1991 c 315 s 21;

(16) RCW 43.17.065 and 1995 c . . . s 24 (section 24 of this act), 1993 c 280 s 37, 1991 c 314 s 28, & 1990 1st ex.s. c 17 s 77;

(17) RCW 43.20A.750 and 1995 c . . . s 25 (section 25 of this act), 1993 c 280 s 38, 1992 c 21 s 4, & 1991 c 153 s 28;

(18) RCW 43.168.140 and 1995 c . . . s 28 (section 28 of this act) & 1991 c 314 s 20;

(19) RCW 50.12.270 and 1995 c . . . s 30 (section 30 of this act) & 1991 c 315 s 3;

(20) RCW 50.70.010 and 1995 c . . . s 31 (section 31 of this act), 1992 c 21 s 1, & 1991 c 315 s 5; and

(21) RCW 50.70.020 and 1995 c . . . s 32 (section 32 of this act) & 1991 c 315 s 6.

NEW SECTION. Sec. 36. To facilitate the evaluation of the effectiveness programs authorized under this act, and to assist in the sunset review of this act by the legislative budget committee under sections 34 and 35 of this act, the rural community assistance task force shall develop a performance measurement system. The performance measurement system shall be developed in consultation with the legislative budget committee and the Washington performance partnership by November 1, 1995, and submitted to the appropriate policy and fiscal committees of the legislature.

The performance measurement system shall measure the performance of the program in relation to the primary intended results: (1) Increased employment; and (2) improved economic viability of families, businesses, and communities in the affected areas. The system should also focus on measures of efficiency such as cost per client and length of time required in training and assistance programs. In quantifying inputs into the programs, the measurement system must demonstrate the negative impacts to the program clients resulting from the timber harvesting limitations and salmon-related problems.

Assessment of the results derived from the performance measurement system shall be the basis of the sunset review to be conducted by the legislative budget committee under sections 34 and 35 of this act.

NEW SECTION. Sec. 37. 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. 38. 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. 39. 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, 1995.

Passed the Senate April 17, 1995.
Passed the House April 13, 1995.
Approved by the Governor May 3, 1995.
Filed in Office of Secretary of State May 3, 1995.

CHAPTER 227

[Substitute Senate Bill 5017]

**COMMERCIAL FISHERY LICENSES—SPECIAL PROVISIONS FOR
YEAR IN WHICH FISHING IS NOT ALLOWED**

AN ACT Relating to commercial fishery licenses; adding a new section to chapter 75.28 RCW; and adding a new section to chapter 75.30 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 75.28 RCW to read as follows:

If, for any reason, the department does not allow any opportunity for a commercial fishery during a calendar year, the department shall either: (1) Waive the requirement to obtain a license for that commercial fishery for that year; or (2) refund applicable license fees upon return of the license.

NEW SECTION. Sec. 2. A new section is added to chapter 75.30 RCW to read as follows:

(1) The department shall waive license requirements, including landing or poundage requirements, if, during the calendar year that a license issued pursuant to chapter 75.28 RCW is valid, no harvest opportunity occurs in the fishery corresponding to the license.

(2) For each license limitation program, where the person failed to hold the license and failed to make landing or poundage requirements because of a license waiver by the department during the previous year, the person shall qualify for a license by establishing that the person held the license during the last year in which the license was not waived.

Passed the Senate April 18, 1995.
Passed the House April 6, 1995.
Approved by the Governor May 3, 1995.
Filed in Office of Secretary of State May 3, 1995.

CHAPTER 228

[Substitute Senate Bill 5012]

COMMERCIAL FISHERY LICENSE—TRANSFER FEE

AN ACT Relating to transfer of fishery licenses; and amending RCW 75.28.011.

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

Sec. 1. RCW 75.28.011 and 1993 sp.s. c 17 s 34 are each amended to read as follows:

(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:

(i) The same as the resident license renewal fee if the license is not limited under chapter 75.30 RCW; ~~((or))~~

(ii) Three and one-half times the resident renewal fee if the license is not a commercial salmon license and the license is limited under chapter 75.30 RCW~~((;))~~;

~~((and))~~ (iii) Fifty dollars if the license is a commercial salmon license and is limited under chapter 75.30 RCW; or

(iv) 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, to be paid by the transferee.

(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.

Passed the Senate April 18, 1995.

Passed the House April 10, 1995.

Approved by the Governor May 3, 1995.

Filed in Office of Secretary of State May 3, 1995.

CHAPTER 229

[Senate Bill 5728]

BUSINESS AND OCCUPATION TAX—INTERNATIONAL INVESTMENT
MANAGEMENT SERVICES

AN ACT Relating to business and occupation tax of international investment management companies; amending RCW 82.04.2201 and 82.04.290; adding a new section to chapter 82.04 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 82.04 RCW to read as follows:

For purposes of RCW 82.04.290(3):

(1) A person is engaged in the business of providing international investment management services, if:

(a) Such person is engaged primarily in the business of providing investment management services; and

(b) At least ten percent of the gross income of such person is derived from providing investment management services to any of the following: (i) Persons or collective investment funds residing outside the United States; or (ii) persons or collective investment funds with at least ten percent of their investments located outside the United States.

(2) "Investment management services" means investment research, investment consulting, portfolio management, fund administration, fund distribution, investment transactions, or related investment services.

(3) "Collective investment fund" includes:

(a) A mutual fund or other regulated investment company, as defined in section 851(a) of the internal revenue code of 1986, as amended;

(b) An "investment company," as that term is used in section 3(a) of the Investment Company Act of 1940, as well as any entity that would be an investment company for this purpose but for the exemptions contained in section 3(c)(1) or (11);

(c) An "employee benefit plan," which includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the internal revenue code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law;

(d) A fund maintained by a tax-exempt organization, as defined in section 501(c)(3) of the internal revenue code of 1986, as amended, for operating, quasi-endowment, or endowment purposes;

(e) Funds that are established for the benefit of such tax-exempt organizations, such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts; or

(f) Collective investment funds similar to those described in (a) through (e) of this subsection created under the laws of a foreign jurisdiction.

(4) Investments are located outside the United States if the underlying assets in which the investment constitutes a beneficial interest reside or are created, issued or held outside the United States.

Sec. 2. RCW 82.04.2201 and 1994 sp.s. c 10 s 1 are each amended to read as follows:

There is levied and shall be collected for the period July 1, 1993, through June 30, 1997, from every person for the act or privilege of engaging in business activities, as a part of the tax imposed under RCW 82.04.220 through 82.04.280 and 82.04.290 (3) and (4), except RCW 82.04.250(1) and 82.04.260(15), an additional tax equal to 4.5 percent multiplied by the tax payable under those sections.

To facilitate collection of these additional taxes, the department of revenue is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the amount to the nearest one-thousandth of one percent of the additional tax hereby imposed, adjusting ten-thousandths equal to or greater than five ten-thousandths to the greater thousandth.

Sec. 3. RCW 82.04.290 and 1993 sp.s. c 25 s 203 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of providing selected business services other than or in addition to those enumerated in RCW 82.04.250 or 82.04.270; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 2.5 percent.

(2) Upon every person engaging within this state in banking, loan, security, investment management, investment advisory, or other financial businesses, other than or in addition to those enumerated in subsection (3) of this section; as to such persons, the amount of the tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of 1.70 percent.

(3) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(4) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280, and subsections (1) (~~and~~), (2), and (3) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 2.0 percent. This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of

service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

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, 1995.

Passed the Senate March 17, 1995.

Passed the House April 14, 1995.

Approved by the Governor May 4, 1995.

Filed in Office of Secretary of State May 4, 1995.

CHAPTER 230

[Second Substitute House Bill 1027]

REDIRECTING RESOURCES TO THE CLASSROOM

AN ACT Relating to redirecting resources to the classroom; 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 finds that in order to improve student learning in Washington's public schools, school districts and the state need to take actions to use the maximum amount of available funding and resources to improve student achievement. The legislature intends to study the state-level education governance system to improve student learning and to reduce unnecessary regulatory oversight. The legislature also finds that if school districts are encouraged to review their expenditures, school districts can develop strategies that will increase the amount of resources used in the classroom.

NEW SECTION. Sec. 2. (1) The joint select committee on education restructuring established in RCW 28A.630.950 shall review the current constitutional and statutory roles and responsibilities of the office of the superintendent of public instruction, the state board of education, the work force training and education coordinating board, the commission on student learning, and educational service districts, and by December 15, 1996, develop a recommendation to the legislature for creating a revised state-level education governance system. The new state-level governance system shall: (a) Focus on the improvement of student learning; (b) result in a reduction of state-level administrative expenditures; (c) provide school district staff and parents technical assistance and leadership; (d) result in minimal regulatory oversight; and (e) have clear lines of authority and accountability.

(2) The select committee may continue its review of laws that inhibit, or do not enhance, student learning.

(2) The select committee may continue its review of laws that inhibit, or do not enhance, student learning.

(3) This section shall expire December 31, 1997.

NEW SECTION. Sec. 3. (1) School district boards of directors are strongly encouraged to review school district expenditures, and to take actions that will increase the percentage of district funds that are used to support the classroom. In order to assist school districts in this effort, the school district financial review program is created. The purpose of the program is to provide funding to school districts to conduct financial reviews and to develop strategies that will increase the amount of resources that are used in the classroom.

(2) The program shall be administered by the superintendent of public instruction, or a public, nonprofit, or private contractor as designated by the superintendent.

(3) The superintendent, or his or her designee, shall establish application and approval requirements for the program. A minimum fifty percent financial match shall be required of school districts. Districts with enrollments larger than five hundred full-time equivalent students that expended less than two-thirds of their total general fund expenditures on teaching and teaching support during the 1993-94 fiscal year shall receive priority in the allocation of funds.

(4) School districts that receive grants shall submit a report to the superintendent, or his or her designee, by December 31, 1995, of actions that the district has taken, or plans to take, to increase classroom expenditures. The superintendent, or his or her designee, shall summarize the information submitted by the districts and present a summary to the fiscal and education policy committees of the legislature before January 15, 1996. If one or more of the fiscal or policy committees find that adequate progress is not being made in redirecting resources to the classroom, the committee or committees shall recommend to the legislature additional measures that should be taken.

(5) The process established in subsections (1) through (4) of this section shall be repeated during calendar year 1997, with the summary in subsection (4) of this section being submitted to the legislature before December 31, 1997.

(6) This section shall expire December 31, 1997.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1995, in the omnibus appropriations act, this act is null and void.

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 May 1, 1995.

Passed the House April 19, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 231

[Substitute House Bill 1047]

RESTITUTION—REVISED PROVISIONS

AN ACT Relating to restitution; amending RCW 9.94A.140, 9.94A.142, 9.94A.145, and 6.17.020; and creating a new section.

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

Sec. 1. RCW 9.94A.140 and 1994 c 271 s 601 are each amended to read as follows:

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within ~~((sixty))~~ one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property. In addition, restitution may be ordered to pay for an injury, loss, or damage if 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) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(4) This section does not limit civil remedies or defenses available to the victim or defendant. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

Sec. 2. RCW 9.94A.142 and 1994 c 271 s 602 are each amended to read as follows:

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within ~~((sixty))~~ one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is

longer. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if 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) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(4) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or defendant. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

(5) This section shall apply to offenses committed after July 1, 1985.

Sec. 3. RCW 9.94A.145 and 1991 c 93 s 2 are each amended to read as follows:

(1) Whenever a person is convicted of a felony, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount. Upon receipt of an offender's monthly payment, after restitution is satisfied, the county clerk shall distribute

the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of 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 recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department of corrections.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be immediately issued. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) All legal financial obligations that are ordered as a result of a conviction for a felony, may also be enforced in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. These obligations may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period is longer. 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.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to truthfully and honestly respond

to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring any and all documents as requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. Also, during the period of supervision, the offender may be required at the request of the department to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to truthfully and honestly respond to all questions concerning earning capabilities and the location and nature of all property or financial assets. Also, the offender is required to bring any and all documents as requested by the department in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department shall for any period of supervision be authorized to collect the legal financial obligation from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purposes of disbursements. The department is authorized to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.2001.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties as provided in RCW 9.94A.200 for noncompliance.

(11) The county clerk shall provide the department with individualized monthly billings for each offender with an unsatisfied legal financial obligation and shall provide the department with notice of payments by such offenders no less frequently than weekly.

Sec. 4. RCW 6.17.020 and 1994 c 189 s 1 are each amended to read as follows:

(1) Except as provided in subsections (2) (~~and~~), (3), and (4) of this section, the party in whose favor a judgment of a court of record of this state or a district court of this state has been or may be rendered, or the assignee, may have an execution issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment.

(2) After July 23, 1989, a party who obtains a judgment or order of a court of record of any state, or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, may have an execution issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been rendered pursuant to subsection (1) or (4) of this section may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment for an order granting an additional ten years during which an execution may be issued. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court. When application is made to the court to grant an additional ten years, the application shall be accompanied by a current and updated judgment summary as outlined in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost.

(4) A party who obtains a judgment or order for restitution or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence may execute the judgment or order any time within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in chapter 9.94A RCW.

NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act shall apply retroactively to allow courts to set restitution in cases sentenced prior to the effective date of this act if:

(1) The court failed to set restitution within sixty days of sentencing as required by RCW 9.94A.140 prior to the effective date of this act;

(2) The defendant was sentenced no more than three hundred sixty-five days before the effective date of this act; and

(3) The defendant is not unfairly prejudiced by the delay.

In those cases, the court may set restitution within one hundred eighty days of the effective date of this act or at a later hearing set by the court for good cause.

Passed the House April 18, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 232

[House Bill 1060]

LIQUOR LICENSING—REVISIONS

AN ACT Relating to improvements to the licensing sections of the Washington state liquor act; and amending RCW 66.24.010, 66.24.025, 66.24.210, 66.24.290, 66.24.300, 66.24.320, 66.24.330, 66.24.420, 66.24.490, and 66.28.180.

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

Sec. 1. RCW 66.24.010 and 1988 c 200 s 1 are each amended to read as follows:

(1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be. The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he

or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a class H license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8) Before the board shall issue a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application be for a license within an incorporated city or town, or to the county legislative authority, if the application be for a license outside the boundaries of incorporated cities or towns; and such incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of Title 34 RCW(~~(as now or hereafter amended)~~).

Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(9) Before the board issues any license to any applicant, it shall give (a) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license class A, B, D, or E or wine retailer license class C or F or class H license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in ~~((the preceding))~~ subsection (9) of this section shall not prohibit the board from authorizing the ~~((transfer))~~ assumption of existing licenses now located within the restricted area ~~((to))~~ by other persons or ~~((locations))~~ licenses or relocations of existing licensed premises within the restricted area ~~((: PROVIDED, Such transfer shall))~~. In no case ((result in establishing)) may the licensed premises be moved closer to a church or school than it was before the ((transfer)) assumption or relocation.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or wholesaler license to ~~((a transferee of a))~~ an applicant assuming an existing retail or wholesaler license to continue the operation of the retail or wholesaler premises during the period ~~((a transfer))~~ the application for the license ~~((from person to person at the same premises))~~ is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or wholesaler license within ninety days of the date of filing the application for a temporary license;

(b) The retail or wholesaler license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application ~~((for transfer of))~~ to assume the retail or wholesaler license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

Sec. 2. RCW 66.24.025 and 1981 1st ex.s. c 5 s 11 are each amended to read as follows:

(1) ~~((The holder of one or more licenses may assign and transfer the same to any qualified person under such rules and regulations as the board may prescribe. PROVIDED, HOWEVER, That no such assignment and transfer shall be made which will result in both a change of licensee and change of location; the fee for such assignment and transfer shall be seventy-five dollars. PROVIDED, FURTHER, That no fee will be charged for transfer))~~ If the board approves, a license may be transferred, without charge, to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties.

(2) The proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the board, and board approval must be obtained before such changes are made. A fee of seventy-five dollars will be

charged for the processing of such change of stock ownership and/or corporate officers.

Sec. 3. RCW 66.24.210 and 1994 1st sp.s. c 7 s 901 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,)) shall 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, 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) 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 violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

Sec. 4. RCW 66.24.290 and 1994 1st sp.s. c 7 s 902 are each amended to read as follows:

(1) Any brewer or beer wholesaler licensed under this title may sell and deliver beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewer or beer wholesaler shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer within the state a tax of two dollars and sixty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer shall pay a tax computed in gallons at the rate of two dollars and sixty cents per barrel of thirty-one gallons. Any brewer or beer wholesaler whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. ~~((Each such brewer or wholesaler shall procure from the board revenue stamps representing such tax in form prescribed by the board and shall affix the same to the barrel or package in such manner and in such denominations as required by the board, and shall cancel the same prior to commencing delivery from his or her place of business or warehouse of such barrels or packages.))~~ Beer shall be sold by brewers and wholesalers in sealed barrels or packages. ~~((The revenue stamps provided under this section need not be affixed and canceled in the making of resales of barrels or packages already taxed by the affixation and cancellation of stamps as provided in this section.))~~

(2) An additional tax is imposed equal to seven percent 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 all beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(4)(a) An additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (4) shall be deposited in the health services account under RCW 43.72.900.

(5) The tax imposed under this section shall not apply to "strong beer" as defined in this title.

Sec. 5. RCW 66.24.300 and 1951 c 93 s 1 are each amended to read as follows:

(1) The board may make refunds for all ~~((stamp))~~ taxes paid on beer exported from the state for use outside the state~~((, and also for tax stamps destroyed prior to the consummation of any sale of beer within the state, or for unused stamps returned to the board))~~.

(2) The board ~~((may waive the use of revenue stamps in the collection of the tax on beer. If the tax is not collected by means of stamps, the board may))~~ shall require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his license until all taxes are paid.

Sec. 6. RCW 66.24.320 and 1991 c 42 s 1 are each amended to read as follows:

There shall be a beer retailer's license to be designated as a class A license to sell beer at retail, for consumption on the premises and to sell beer for consumption off the premises~~((+ PROVIDED, HOWEVER, That))~~. Beer sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler of not less than ~~((seven and three-fourths))~~ four gallons~~((+ AND PROVIDED FURTHER, That))~~. Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale~~((+))~~. Such licenses ~~((to))~~ may be issued only to hotels, restaurants, drug stores or soda fountains, dining places on boats and airplanes, to clubs, and at sports arenas or race tracks during recognized professional athletic events. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns	Fee
Less than 20,000	\$ 205
20,000 or over	\$ 355

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars~~((+ PROVIDED, HOWEVER, That))~~. The annual license fee for such license, if issued to dining places on vessels not exceeding one thousand gross tons, plying on inland waters of the state of Washington on regular schedules, shall be two hundred five dollars.

Sec. 7. RCW 66.24.330 and 1991 c 42 s 2 are each amended to read as follows:

There shall be a beer retailer's license to be designated as a class B license to sell beer at retail, for consumption on the premises and to sell beer for consumption off the premises(~~(- PROVIDED, HOWEVER, That)~~). Beer sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler of not less than ~~((seven and three fourths))~~ four gallons(~~(+ AND PROVIDED FURTHER, That)~~). Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale(~~(+)~~). Such licenses ~~((+))~~ may be issued only to a person operating a tavern. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns	Fee
Less than 20,000	\$ 205
20,000 or over	\$ 355

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars.

**Sec. 8. RCW 66.24.420 and 1981 1st ex.s. c 5 s 45 are each amended to read as follows:*

(1) The class H license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for said license, if issued to a club, whether inside or outside of incorporated cities and towns, shall be seven hundred dollars.

(b) The annual fee for said license, if issued to any other class H licensee in incorporated cities and towns, shall be graduated according to the population thereof as follows:

<i>Incorporated</i>	
<i>Cities and towns</i>	<i>Fees</i>
<i>Less than 20,000</i>	<i>\$1,200</i>
<i>20,000 or over</i>	<i>\$2,000</i>

(c) The annual fee for said license when issued to any other class H licensee outside of incorporated cities and towns shall be: Two thousand dollars; this fee shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(d) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a restaurant in an airport terminal facility shall

be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: PROVIDED, FURTHER, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association, or person operating dining places at publicly owned civic centers with facilities for sports, entertainment, and conventions, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a dining place at such a publicly owned civic center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and food service shall be available on request in other licensed places on the premises: PROVIDED FURTHER, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(f) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a class H licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place: PROVIDED, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: PROVIDED FURTHER, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine class H licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue class H licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and

towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of class H licenses issued in the state of Washington by the board, not including those class H licenses issued to clubs, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a class H license to any applicant if in the opinion of the board the class H licenses already granted for the particular locality are adequate for the reasonable needs of the community.

*Sec. 8 was vetoed. See message at end of chapter.

Sec. 9. RCW 66.24.490 and 1994 c 201 s 3 are each amended to read as follows:

(1) There shall be a retailer's license to be designated as a class I caterer's license; this shall be a special occasion license to be issued to the holder of a class A, C, D, or public H license to extend the privilege of selling and serving liquor as authorized under such a license at retail, for consumption on the premises, to members and guests of a society or organization on special occasions at a specified date and place when such special occasions of such groups are held on premises other than the licensed premises and for consumption on the premises of such outside location. The holder of such special occasion license shall be allowed to remove from the liquor stocks at the licensed premises, and allow liquor for sale and service at such special occasion locations. ~~((Upon payment of a fee of twenty five dollars per day or, upon proper application to the liquor control board,))~~ An annual class I license may be issued to the holder of a class A, C, D, or public H license upon proper application to the board and payment of a fee of three hundred fifty dollars.

(2) The holder of a class I license shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request the class I licensee shall provide to the board all necessary or requested information concerning the society or organization which will be holding the function at which the class I license will be utilized.

(3) If attendance at the function will be open to the general public, the society or organization sponsoring the function shall be within the definition of "society or organization" in RCW 66.24.375. If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, then the requirement that the society or organization be within the definition of RCW 66.24.375 is waived.

Sec. 10. RCW 66.28.180 and 1985 c 226 s 4 are each amended to read as follows:

It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer wholesaler's license, a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine wholesaler's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and wholesalers.

(2) Beer and wine wholesale price posting. (a) Every beer or wine wholesaler shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine wholesaler shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine wholesaler;

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine wholesaler may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine wholesaler and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Wholesale prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the wholesaler who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any

posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) All price postings filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

(h) Any beer and/or wine wholesaler or employee authorized by the wholesaler-employer may sell beer and/or wine at the wholesaler's posted prices to any class A, B, C, D, E, F, H, G, or J licensee upon presentation to the wholesaler or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every class A, B, C, D, E, F, H, G, or J licensee, upon purchasing any beer and/or wine from a wholesaler shall immediately cause such beer or wine to be delivered to the licensed premises and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the wholesaler or an authorized employee either to the retailer's licensed premises or directly to the retailer at the wholesaler's licensed premises. A wholesaler's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda. (a) Every brewery and winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with an beer or wine wholesaler which contracts or memoranda shall contain a schedule of prices charged to wholesalers for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and an and all other discounts or allowances. Whenever changed or modified such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine wholesalers who sell to other beer and/or wine wholesalers.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a brewery or winery shall be uniform prices to all wholesalers on a state-wide basis less bona fide allowances for freight differen-

tials. Quantity discounts are prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine wholesaler or to a beer or wine wholesaler who sells beer or wine to another beer or wine wholesaler. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(c) No brewery, winery, certificate of approval holder, wine importer, or wine wholesaler may sell or offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No brewery or winery may sell or offer to sell any package or container of beer or wine to any wholesaler at a price differing from the price for such package or container as shown in the schedule of prices filed by the brewer or domestic winery and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time fixed by the board. If the price filing, contract, or memorandum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) All prices, contracts, and memoranda filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

Passed the House April 19, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 5, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 5, 1995.

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

"I am returning herewith, without my approval as to section 8, House Bill No. 1060 entitled:

"AN ACT Relating to improvements to the licensing sections of the Washington state liquor act;"

This bill provides additional flexibility to the Liquor Control Board allowing greater responsiveness in its regulatory functions.

Section 8 of the bill would allow Class H licensed hotels to extend their licenses to property owned or leased for use as a conference, convention center, or banquet facility. Identical language extending this authority was included in Senate Bill No. 5563 which has already been signed into law. Vetoing this duplicate section will avoid unnecessary cross referencing requirements in the Revised Code of Washington.

For this reason, I am vetoing section 8 of House Bill No. 1060.

With the exception of section 8, House Bill No. 1060 is approved."

CHAPTER 233

[Engrossed House Bill 1131]

STATE RETIREMENT SYSTEMS—ECONOMIC ASSUMPTIONS

AN ACT Relating to economic assumptions for state retirement systems; amending RCW 41.45.030 and 41.45.060; repealing RCW 41.45.040 and 41.45.0601; and declaring an emergency. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.45.030 and 1993 c 519 s 17 are each amended to read as follows:

(1) Beginning September 1, (~~(1989)~~) 1995, and every (~~(six)~~) two years thereafter, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system. The council shall review this and such other information as it may require.

(2) By December 31, 1995, and every two years thereafter, the council, by affirmative vote of five council members, shall (~~(review the information submitted by the state actuary and shall)~~) adopt the following long-term economic assumptions:

(a) Growth in system membership;

(b) Growth in salaries, exclusive of merit or longevity increases;

(c) Growth in inflation; and

(d) Investment rate of return.

The council shall work with the department of retirement systems, the state actuary, and the executive director of the state investment board, and shall consider long-term historical averages, in developing the economic assumptions.

(3) The assumptions adopted by the council shall be used by the state actuary in conducting (~~(valuation)~~) all actuarial studies of the state retirement systems.

~~((3) The council may utilize information provided by the state actuary and such other information as it may request.))~~

*Sec. 2. RCW 41.45.060 and 1993 c 519 s 19 are each amended to read as follows:

(1) ~~((For the period of September 1, 1993, through August 31, 1995, the basic state contribution rate for the law enforcement officers' and fire fighters' retirement system, and the basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system shall be as determined in the 1991 valuations prepared by the office of the state actuary-))~~ The state actuary shall provide actuarial valuation results based on the assumptions adopted under RCW 41.45.030.

(2) Not later than September 30, ~~((1994))~~ 1996, and every two years thereafter~~((+))~~

~~((a))~~, consistent with the assumptions adopted under RCW 41.45.030, the council shall adopt ((the contributions to be used in the ensuing biennial period for the systems specified in subsection (1) of this section.

~~((b))~~ both: (a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system; and (b) basic employer contribution rates for the public employees' retirement system plan I, the teachers' retirement system plan I, and the Washington state patrol retirement system to be used in the ensuing biennial period.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and the unfunded liability of the Washington state patrol retirement system not later than June 30, 2024; and

(b) To also continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plan II, and the law enforcement officers' and fire fighters' retirement system plan II in accordance with RCW 41.40.650, 41.32.775, and 41.26.450, respectively.

(4) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted ((under (a) of this subsection)).

~~((e))~~ (5) The director of the department of retirement systems shall collect those rates adopted by the council ((under this chapter)).

*Sec. 2 was vetoed. Sec message at end of chapter.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

- (1) RCW 41.45.040 and 1993 c 519 s 18 & 1989 c 273 s 4; and
- (2) RCW 41.45.0601 and 1993 c 519 s 20 & 1992 c 239 s 1.

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 14, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 5, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 5, 1995.

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

"I am returning herewith, without my approval as to section 2, Engrossed House Bill No. 1131 entitled:

"AN ACT Relating to economic assumptions for state retirement systems;"

Engrossed House Bill No. 1131 requires the Economic and Revenue Forecast Council to adopt long term economic assumptions for pension rate calculation purposes every two years instead of the current six year cycle. I strongly favor the direction this bill takes in providing for additional pension contribution rate stability. However, detailed and specific language preferable to that of section 2 exists in section 309 of Engrossed Substitute House Bill No. 1206, relating to retirement systems restructuring. These sections cannot properly be merged.

For this reason, I have vetoed section 2 of Engrossed House Bill No. 1131.

With the exception of section 2, Engrossed House Bill No. 1131 is approved."

CHAPTER 234

[House Bill 1136]

INMATE WELFARE ACCOUNTS

AN ACT Relating to inmate welfare accounts; amending RCW 7.68.090; adding a new section to chapter 72.09 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 the responsibility for criminal activity should fall squarely on the criminal. To the greatest extent possible society should not be expected to have to pay the price for crimes twice, once for the criminal activity and again by feeding, clothing, and housing the criminal. The corrections system should be the first place criminals are given the opportunity to be responsible for paying for their criminal act, not just through the loss of their personal freedom, but by making financial contributions to alleviate the pain and suffering of victims of crime.

NEW SECTION. Sec. 2. A new section is added to chapter 72.09 RCW to read as follows:

Each year the department shall transfer twenty-five percent of the total annual revenues and receipts received in each institutional betterment fund subaccount to the department of labor and industries for the purpose of providing direct benefits to crime victims through the crime victims' compensation program as outlined in chapter 7.68 RCW. This transfer takes priority over any

expenditure of betterment funds and shall be reflected on the monthly financial statements of each institution's betterment fund subaccount.

Any funds so transferred to the department of labor and industries shall be in addition to the crime victims' compensation amount provided in an omnibus appropriation bill. It is the intent of the legislature that the funds forecasted or transferred pursuant to this section shall not reduce the funding levels provided by appropriation.

Sec. 3. RCW 7.68.090 and 1973 1st ex.s. c 122 s 9 are each amended to read as follows:

The director shall establish such fund or funds, separate from existing funds, necessary to administer this chapter, and payment to these funds shall be from legislative appropriation, statutory provision, reimbursement and subrogation as provided in this chapter, and from any contributions or grants specifically so directed.

Passed the House April 19, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 235

[Engrossed Second Substitute House Bill 1156]

NONPROFIT EDUCATIONAL FOUNDATIONS

AN ACT Relating to assisting school districts to establish and develop educational foundations; 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 nonprofit educational foundations created to provide financial and other support to public schools can play an important role in enhancing the quality of education in Washington state. Educational foundations are private nonprofit corporations that are organized to benefit education in school districts and local communities. These foundations do not supplant the role of the state. They are able to access private, federal, and local resources not otherwise available to public schools, to devise innovative solutions to solve problems, and to serve students in new and innovative ways. Existing efforts supported or administered by foundations include drop-out prevention programs, innovative classroom grants, and math clubs for girls.

The legislature further finds that while the number of public school foundations in Washington is increasing, only a small percentage of the school districts in the state are assisted by foundations. In addition, many states have one hundred to two hundred education foundations enhancing educational opportunities for their students. Additional leadership and support from the state in assisting in the establishment and development of foundations would increase

the number of foundations, and thereby increase the number of students who would benefit from their support.

NEW SECTION. **Sec. 2.** (1) The department of community, trade, and economic development shall enter into a contract with one or more organizations or individuals to provide support, guidance, training, and technical assistance to individuals and organizations for the establishment and development of nonprofit educational foundations established to provide financial support and services to assist public schools.

(2) The department shall solicit contract proposals from the following: Washington state school directors' association, Washington coalition of public schools foundations, northwest development officers association, Washington association of partners in education, and other individuals and organizations that have the appropriate experience and expertise.

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, 1995, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec. 4.** This act shall expire December 31, 1997.

Passed the House April 19, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 236

[House Bill 1186]

CHILD SUPPORT—SOCIAL SECURITY BENEFITS

AN ACT Relating to social security benefits; and amending RCW 26.18.190.

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

Sec. 1. RCW 26.18.190 and 1990 1st ex.s. c 2 s 17 are each amended to read as follows:

(1) When the department of labor and industries or a self-insurer pays compensation under chapter 51.32 RCW on behalf of or on account of the child or children of the injured worker for whom the injured worker owes a duty of child support, the amount of compensation the department or self-insurer pays on behalf of the child or children shall be treated for all purposes as if the injured worker paid the compensation toward satisfaction of the injured worker's child support obligations.

(2) When the social security administration pays social security disability dependency benefits, retirement benefits, or survivors insurance benefits on behalf of or on account of the child or children of ~~((the))~~ a disabled person, a retired person, or a deceased person, the amount of ~~((compensation))~~ benefits paid for the child or children shall be treated for all purposes as if the disabled

person, the retired person, or the deceased person paid the ~~((compensation))~~ benefits toward the satisfaction of ~~((the disabled))~~ that person's child support obligation for that period for which benefits are paid.

(3) Under no circumstances shall the person who has the obligation to make the transfer payment have a right to reimbursement of any compensation paid under subsection (1) or (2) of this section.

Passed the House April 19, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 237

[Substitute House Bill 1195]

SITE EXPLORATION EXCLUDED AS A SUBSTANTIAL SHORELINE DEVELOPMENT

AN ACT Relating to the exclusion of site exploration as a substantial shoreline development; and amending RCW 90.58.030.

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

Sec. 1. RCW 90.58.030 and 1987 c 474 s 1 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

- (1) Administration:
 - (a) "Department" means the department of ecology;
 - (b) "Director" means the director of the department of ecology;
 - (c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;
 - (d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;
 - (e) "Hearing board" means the shoreline hearings board established by this chapter.
- (2) Geographical:
 - (a) "Extreme low tide" means the lowest line on the land reached by a receding tide;
 - (b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the

line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of state-wide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them; except (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of state-wide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those wetlands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Wetlands" or "wetland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all marshes, bogs, swamps, and river

deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology: PROVIDED, That any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

(g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on wetlands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: PROVIDED, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on wetlands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences, the cost of which does not exceed two thousand five hundred dollars;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Any action commenced prior to December 31, 1982, pertaining to (A) the restoration of interim transportation services as may be necessary as a consequence of the destruction of the Hood Canal bridge, including, but not limited to, improvements to highways, development of park and ride facilities, and development of ferry terminal facilities until a new or reconstructed Hood Canal bridge is open to traffic; and (B) the reconstruction of a permanent bridge at the site of the original Hood Canal bridge;

(xii) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550.

Passed the House April 19, 1995.
Passed the Senate April 10, 1995.
Approved by the Governor May 5, 1995.
Filed in Office of Secretary of State May 5, 1995.

CHAPTER 238

[Substitute House Bill 1348]

ESCROW AGENT REGULATION

AN ACT Relating to the regulation of escrow agents; amending RCW 18.44.010, 18.44.080, 18.44.208, 18.44.290, 18.44.380, 43.320.011, 43.320.013, 43.320.060, and 43.320.110; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 18.44.010 and 1985 c 7 s 47 are each amended to read as follows:

Unless the context otherwise requires terms used in this chapter shall have the following meanings:

(1) "Department" means the department of ~~((licensing))~~ financial institutions.

(2) "Director" means the director of ~~((licensing))~~ financial institutions, or his or her duly authorized representative.

(3) "Escrow" means any transaction wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

(4) "Escrow agent" means any sole proprietorship, firm, association, partnership, or corporation engaged in the business of performing for compensation the duties of the third person referred to in RCW 18.44.010(3) above.

(5) "Certificated escrow agent" means any sole proprietorship, firm, association, partnership, or corporation holding a certificate of registration as an escrow agent under the provisions of this chapter.

(6) "Person" unless a different meaning appears from the context, includes an individual, a firm, association, partnership or corporation, or the plural thereof, whether resident, nonresident, citizen or not.

(7) "Escrow officer" means any natural person handling escrow transactions and licensed as such by the director.

(8) "Escrow commission" means the escrow commission of the state of Washington created by RCW 18.44.208.

(9) "Controlling person" is any person who owns or controls ten percent or more of the beneficial ownership of any escrow agent, regardless of the form of business organization employed and regardless of whether such interest stands in such person's true name or in the name of a nominee.

Sec. 2. RCW 18.44.080 and 1985 c 340 s 1 are each amended to read as follows:

The director shall charge and collect the following fees:

(1) For filing an original or a renewal application for registration as an escrow agent, annual fees for the first office or location and for each additional office or location.

(2) For filing an application for a change of address, for each certificate of registration and for each escrow officer license being so changed.

(3) For filing an application for a duplicate of a certificate of registration or of an escrow officer license lost, stolen, destroyed, or for replacement.

(4) For providing administrative support to the escrow commission.

All fees under this chapter shall be set by rule by the director (~~in accordance with RCW 43.24.086~~). In fixing these fees, the director shall set the fees at a sufficient level to defray the costs of administering this chapter.

All fees received by the director under this chapter shall be paid (~~by him~~) into the state treasury to the credit of the (~~general fund~~) banking examination fund.

Sec. 3. RCW 18.44.208 and 1985 c 340 s 3 are each amended to read as follows:

There is established an escrow commission of the state of Washington, to consist of the director of (~~licensing~~) financial institutions or his or her designee as chairman, and five other members who shall act as advisors to the director as to the needs of the escrow profession, including but not limited to the design and conduct of tests to be administered to applicants for escrow licenses, the schedule of license fees to be applied to the escrow licensees, educational programs, audits and investigations of the escrow profession designed to protect the consumer, and

such other matters determined appropriate. ~~((Such members shall be appointed by the governor))~~ The director is hereby empowered to and shall appoint the other members, each of whom shall have been a resident of this state for at least five years and shall have at least five years experience in the practice of escrow as an escrow agent or as a person in responsible charge of escrow transactions.

The members of the first commission shall serve for the following terms: One member for one year, one member for two years, one member for three years, one member for four years, and one member for five years, from the date of their appointment, or until their successors are duly appointed and qualified. Every member of the commission shall receive a certificate of appointment from the ~~((governor))~~ director and before beginning the member's term of office shall file with the secretary of state a written oath or affirmation for the faithful discharge of the member's official duties. On the expiration of the term of each member, the ~~((governor))~~ director shall appoint a successor to serve for a term of five years or until the member's successor has been appointed and qualified.

The ~~((governor))~~ director may remove any member of the commission for cause. Vacancies in the commission for any reason shall be filled by appointment for the unexpired term.

Members shall be compensated in accordance with RCW 43.03.240, and shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060.

Sec. 4. RCW 18.44.290 and 1977 ex.s. c 156 s 22 are each amended to read as follows:

Any person desiring to be an escrow officer shall meet the requirements of RCW 18.44.220 as provided in this chapter. The applicant shall make application endorsed by a certificated escrow agent to the director on a form to be prescribed and furnished by the director. Such application must be received by the director within one year of passing the escrow officer examination. With this application the applicant shall:

- (1) Pay a license fee as set forth ~~((in this chapter))~~ by rule; and
- (2) Furnish such proof as the director may require concerning his or her honesty, truthfulness, good reputation, and identity, including but not limited to fingerprints.

Sec. 5. RCW 18.44.380 and 1987 c 471 s 10 are each amended to read as follows:

A request for a waiver of the required errors and omissions policy may be accomplished under the statute by submitting to the director an affidavit that substantially addresses the following:

**REQUEST FOR WAIVER OF
ERRORS AND OMISSIONS POLICY**

I,, residing at, City of, County of, State of Washington, declare the following:

(1) The state escrow commission has determined that an errors and omissions policy is not reasonably available to a substantial number of licensed escrow officers; and

(2) Purchasing an errors and omissions policy is cost-prohibitive at this time; and

(3) I have not engaged in any conduct that resulted in the termination of my escrow certificate; and

(4) I have not paid, directly or through an errors and omissions policy, claims in excess of ten thousand dollars, exclusive of costs and attorneys' fees, during the calendar year preceding submission of this affidavit; and

(5) I have not paid, directly or through an errors and omissions policy, claims, exclusive of costs and attorneys' fees, totaling in excess of twenty thousand dollars in the three calendar years immediately preceding submission of this affidavit; and

(6) I have not been convicted of a crime involving honesty or moral turpitude during the calendar year preceding submission of this application.

THEREFORE, in consideration of the above, I,, respectfully request that the director of ((~~licensing~~)) financial institutions grant this request for a waiver of the requirement that I purchase and maintain an errors and omissions policy covering my activities as an escrow agent licensed by the state of Washington for the period from, 19. . . , to, 19. . .

Submitted this day of day of, 19. . .

.....
(signature)

State of Washington, }
County of ((~~King~~)) } ss.

I certify that I know or have satisfactory evidence that, signed this instrument and acknowledged it to be free and voluntary act for the uses and purposes mentioned in the instrument.

Dated
Signature of
Notary Public
(Seal or stamp) Title
My appointment expires

Sec. 6. RCW 43.320.011 and 1993 c 472 s 6 are each amended to read as follows:

(1) All powers, duties, and functions of the department of general administration under Titles 30, 31, 32, 33, and 43 RCW and any other title pertaining to duties relating to banks, savings banks, foreign bank branches, savings and loan associations, credit unions, consumer loan companies, check cashers and sellers, trust companies and departments, and other similar

institutions are transferred to the department of financial institutions. All references to the director of general administration, supervisor of banking, or the supervisor of savings and loan associations in the Revised Code of Washington are construed to mean the director of the department of financial institutions when referring to the functions transferred in this section. All references to the department of general administration in the Revised Code of Washington are construed to mean the department of financial institutions when referring to the functions transferred in this subsection.

(2) All powers, duties, and functions of the department of licensing under chapters 18.44, 19.100, 19.110, 21.20, 21.30, and 48.18A RCW and any other statute pertaining to the regulation under the chapters listed in this subsection of escrow agents, securities, franchises, business opportunities, commodities, and any other speculative investments are transferred to the department of financial institutions. All references to the director or department of licensing in the Revised Code of Washington are construed to mean the director or department of financial institutions when referring to the functions transferred in this subsection.

Sec. 7. RCW 43.320.013 and 1993 c 472 s 9 are each amended to read as follows:

All employees classified under chapter 41.06 RCW, the state civil service law, who are employees of the department of general administration or the department of licensing engaged in performing the powers, functions, and duties transferred by RCW 43.320.011, except those under chapter 18.44 RCW, are transferred to the department of financial institutions. All such employees are assigned to the department of financial institutions 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.

Sec. 8. RCW 43.320.060 and 1993 c 472 s 20 are each amended to read as follows:

The director of financial institutions shall appoint, deputize, and employ examiners and such other assistants and personnel as may be necessary to carry on the work of the department of financial institutions.

In the event of the director's absence the director shall have the power to deputize one of the assistants of the director to exercise all the powers and perform all the duties prescribed by law with respect to banks, savings banks, foreign bank branches, savings and loan associations, credit unions, consumer loan companies, check cashers and sellers, trust companies and departments, securities, franchises, business opportunities, commodities, escrow agents, and other similar institutions or areas that are performed by the director so long as the director is absent: PROVIDED, That such deputized assistant shall not have the power to approve or disapprove new charters, licenses, branches, and satellite facilities, unless such action has received the prior written approval of the

director. Any person so deputized shall possess the same qualifications as those set out in this section for the director.

Sec. 9. RCW 43.320.110 and 1993 c 472 s 25 are each amended to read as follows:

There is created a local fund known as the "banking examination fund" which shall consist of all moneys received by the department of financial institutions from banks, savings banks, foreign bank branches, savings and loan associations, consumer loan companies, check cashers and sellers, ~~((and))~~ trust companies and departments, and escrow agents, and which shall be used for the purchase of supplies and necessary equipment and the payment of salaries, wages, utilities, and other incidental costs required for the proper regulation of these companies. The state treasurer shall be the custodian of the fund. Disbursements from the fund shall be on authorization of the director of financial institutions or the director's designee. In order to maintain an effective expenditure and revenue control, the fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

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 July 1, 1995.

Passed the House April 18, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 239

[Engrossed Substitute House Bill 1206]

TEACHERS' RETIREMENT SYSTEM PLAN III

AN ACT Relating to creating new retirement systems; amending RCW 41.32.005, 41.32.032, 41.45.010, 41.45.020, 41.45.030, 41.45.050, 41.45.060, 41.45.070, 41.50.075, 41.50.110, 41.50.030, 41.50.050, 41.50.060, 41.54.030, 41.04.440, 41.04.445, and 41.04.450; reenacting and amending RCW 41.32.010; adding new sections to chapter 41.32 RCW; adding new sections to chapter 41.50 RCW; adding a new section to chapter 41.45 RCW; adding a new section to chapter 41.54 RCW; adding a new section to chapter 43.33A RCW; adding a new chapter to Title 41 RCW; creating new sections; repealing RCW 41.04.250, 41.04.255, 41.04.260, 41.32.775, 41.45.040, 41.45.0601, 41.45.901, 41.50.032, and 41.50.250; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature recognizes that teachers, principals, and district administrators need the ability to make transitions to other public or private sector careers, and that the retirement system should not be a barrier to exercise of employee choice. The legislature also recognizes that teachers, principals, and district administrators need a secure and viable retirement benefit, not only for their own financial protection, but also that public funds are spent prudently for their intended purpose.

It is the legislative intent to create a new public retirement system that balances flexibility with stability, provides both increased employee control of investments and responsible protection of the public's investment in employee benefits, and encourages the pursuit of public sector careers without preventing employees from transitioning into other public or private sector employment.

Therefore, the purpose of chapter . . . , Laws of 1995 (this act) is to continue to provide teachers, principals, and district administrators with a guaranteed pension at retirement age based on years of public service with an element of inflation protection. It is further the purpose of chapter . . . , Laws of 1995 (this act) to create a parallel retirement plan where employees have options regarding the investment of their retirement contributions and have the opportunity, along with the accompanying risk, to receive a full rate of return on their investments and where employees who leave public employment prior to retirement receive a fair and reasonable value from the retirement system.

PART I
DEFINED BENEFIT—TRS III

Sec. 101. RCW 41.32.005 and 1992 c 72 s 4 are each amended to read as follows:

RCW 41.32.010 through 41.32.067 shall apply to members of plan I ~~((and))~~, plan II, and plan III.

Sec. 102. RCW 41.32.010 and 1994 c 298 s 3, 1994 c 247 s 2, and 1994 c 197 s 12 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 and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) 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, including any amount paid under RCW 41.50.165(2), 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 and plan III 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.

(ii) "Earnable compensation" for plan I members also includes the following actual or imputed payments, which are not paid for personal services:

(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.

(iii) 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.

(iv) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan II and plan III 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.

"Earnable compensation" for plan II and plan III members also includes the following actual or imputed payments which, except in the case of (h)(ii)(B) of this subsection, are not paid for personal services:

(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 and plan III 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" for plan I members means the time during which a member has been employed by an employer for compensation.

(i) If 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.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan II and plan III 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.

(iv) 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.

(v) 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.

(vi) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan II "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

- (A) Less than eleven days equals one-quarter service credit month;
- (B) Eleven or more days but less than twenty-two days equals one-half service credit month;
- (C) Twenty-two days equals one service credit month;
- (D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;
- (E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.
- (vii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.
- (viii) 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 and plan III 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 person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member. A person is in receipt of a retirement allowance as defined in subsection (24) of this section or other benefit as provided by this chapter when the department mails, causes to be mailed, or otherwise transmits the retirement allowance warrant.
- (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 and plan III 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, and prior to the effective date of this act.

(40) "Plan III" means the teachers' retirement system, plan III providing the benefits and funding provisions covering persons who first become members of the system on and after the effective date of this act or who transfer under section 303 of this act.

(41) "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.

(42) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Wasbington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

~~((41))~~ (43) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

~~((42))~~ (44) "Index B" means the index for the year prior to index A.

~~((43))~~ (45) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

~~((44))~~ (46) "Adjustment ratio" means the value of index A divided by index B.

Sec. 103. RCW 41.32.032 and 1992 c 212 s 17 are each amended to read as follows:

(1) Any teacher, as defined under RCW 41.32.010, who is first employed by a public school on or after June 7, 1984, shall become a member of the retirement system (~~(as directed under RCW 41.32.780)~~) if otherwise eligible.

(2) Any person who before June 7, 1984, has established service credit under chapter 41.40 RCW while employed in an educational staff associate position and who is employed in such a position on or after June 7, 1984 has the following options:

(a) To remain a member of the public employees' retirement system notwithstanding the provisions of RCW 41.32.240 or 41.32.780; or

(b) To irrevocably elect to join the retirement system under this chapter and to receive service credit for previous periods of employment in any position included under RCW 41.32.010. This service credit and corresponding employee contribution shall be computed as though the person had then been a member of the retirement system under this chapter. All employee contributions credited to a member under chapter 41.40 RCW for service now to be credited to the retirement system under this chapter shall be transferred to the system and the member shall not receive any credit nor enjoy any rights under chapter 41.40 RCW for those periods of service. The member shall pay any difference between the employee contributions made under chapter 41.40 RCW and transferred under this subsection and what would have been required under this chapter, including interest as set by the director. The member shall be given until July 1, 1989, to make the irrevocable election permitted under this section. The election shall be made by submitting written notification as required by the department requesting credit under this section and by remitting any necessary proof of service or payments within the time set by the department.

Any person, not employed as an educational staff associate on June 7, 1984, may, before June 30 of the fifth school year after that person's return to employment as a teacher, request and establish membership and credit under this subsection.

PLAN III

NEW SECTION. **Sec. 104.** (1) Sections 104 through 117 of this act shall apply only to plan III members.

(2) Plan III shall consist of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.— RCW (sections 201 through 209 of this act). All contributions on behalf of the employer paid by an employee shall be made to the defined benefit portion of plan III and shall be nonrefundable when paid to the fund described in RCW 41.50.075(3).

(3) Unless otherwise specified, all references to "plan III" in this subchapter refer to the defined benefit portion of plan III.

NEW SECTION. Sec. 105. All teachers who first become employed by an employer in an eligible position on or after the effective date of this act shall be members of plan III.

NEW SECTION. Sec. 106. A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

NEW SECTION. Sec. 107. Retirement allowances paid under the defined benefit portion of plan III shall have a postretirement cost-of-living allowance calculated and paid as provided in RCW 41.32.770.

NEW SECTION. Sec. 108. (1) Upon retirement for service as prescribed in section 113 of this act or retirement for disability under section 114 of this act, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. Upon the death of the retired member, all benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to such person or persons as the retiree shall have nominated by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and joint and fifty percent survivor option.

(2) A member, if married, must provide the written consent of his or her spouse to the option selected under this section. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section.

NEW SECTION. Sec. 109. Any member or beneficiary eligible to receive a retirement allowance under the provisions of section 113, 114, or 117 of this act shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to section 112 of this act shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death.

NEW SECTION. Sec. 110. (1) No retiree shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010 or 41.32.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030, except that a plan III retiree may work in eligible positions on a temporary basis for up to five months per calendar year.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused the suspension of benefits. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

NEW SECTION. Sec. 111. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(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 (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:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

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.

(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 if 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.

The department shall bill the employer for its contribution required under this act for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution plus interest to the defined contribution portion as determined by the department.

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.

NEW SECTION. Sec. 112. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased by three percent compounded annually on January 1. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section shall be deemed to be retired from this system.

NEW SECTION. Sec. 113. (1) **NORMAL RETIREMENT.** Any member who has vested and attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of section 106 of this act.

(2) **EARLY RETIREMENT.** Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of section 106 of this act, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

NEW SECTION. Sec. 114. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as

determined by the department shall be eligible to receive an allowance under the provisions of plan III. The member shall receive a monthly disability allowance computed as provided for in section 106 of this act and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in section 108 of this act.

NEW SECTION. Sec. 115. (1) An active member shall become vested in the right to a benefit upon completing ten years of service or upon completing five years of service and attaining age fifty-five.

(2) A vested member who separates or has separated may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of section 113 of this act.

(3) The retirement allowance payable under section 113 of this act to a member who separates after having completed at least twenty years of service shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

NEW SECTION. Sec. 116. A nonvested member who leaves service and then reenters membership must earn an additional twelve service credit months to restore past service credit in the defined benefit portion of plan III.

NEW SECTION. Sec. 117. If a member who is vested dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in section 108 of this act actuarially reduced to reflect a joint and one hundred percent survivor option and if the member was not eligible for normal retirement at the date of death a further reduction as described in section 113(2) of this act.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children 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. The allowance shall

be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

NEW SECTION. Sec. 118. Sections 104 through 117 of this act are designated as a subchapter within chapter 41.32 RCW with the subchapter heading "Provisions Applicable to Plan III."

**PART II
DEFINED CONTRIBUTION PORTION OF PLAN III**

NEW SECTION. Sec. 201. The purpose of chapter . . . , Laws of 1995 (this act) is to:

- (1) Provide a fair and reasonable value from the retirement system for those who leave public employment before retirement;
- (2) Increase flexibility for such employees to make transitions into other public or private sector employment;
- (3) Increase employee options for addressing retirement needs, personal financial planning, and career transitions; and
- (4) Continue the legislature's established policy of having employees contribute toward their retirement benefits.

NEW SECTION. Sec. 202. As used in this chapter, the following terms have the meanings indicated:

- (1) "Actuary" means the state actuary or the office of the state actuary.
- (2) "Board" means the employee retirement benefits board authorized in chapter 41.50 RCW.
- (3) "Department" means the department of retirement systems.
- (4) "Compensation" for purposes of this chapter is the same as "earnable compensation" for plan III in chapter 41.32 RCW.
- (5) "Member" means any employee included in the membership of a retirement system as provided for plan III in chapter 41.32 RCW.
- (6) "Member account" means the sum of the contributions and earnings on behalf of the member.
- (7) "Retiree" means any member in receipt of an allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

NEW SECTION. Sec. 203. (1) This chapter applies only to members of plan III retirement systems created under chapter 41.32 RCW.

(2) Plan III consists of two separate elements: (a) A defined benefit portion covered under sections 101 through 117, chapter . . . , Laws of 1995 (sections 101 through 117 of this act); and (b) a defined contribution portion covered under this chapter. Unless specified otherwise, all references to "plan III" in this chapter refer to the defined contribution portion of plan III.

NEW SECTION. Sec. 204. (1) A member shall contribute from his or her compensation according to one of the following rate structures:

<u>Option A</u>	<u>Contribution Rate</u>
All Ages	5.0% fixed
<u>Option B</u>	
Up to Age 35	5.0%
Age 35 to 44	6.0%
Age 45 and above	7.5%
<u>Option C</u>	
Up to Age 35	6.0%
Age 35 to 44	7.5%
Age 45 and above	8.5%

(2) The board shall have the right to offer contribution rate options in addition to those listed in subsection (1) of this section, provided that no significant additional administrative costs are created. All options offered by the board shall conform to the requirements stated in subsections (3) and (4) of this section.

(3) Within ninety days of the date that an employee becomes a member of plan III, he or she has an irrevocable option to choose one of the above contribution rate structures. If the member does not select an option within this ninety-day period, he or she shall be assigned option A. Such assignment shall be irrevocable.

(4) Contributions shall begin the first day of the month immediately following the earlier of the selection of an option or the end of the ninety-day period.

NEW SECTION. Sec. 205. The legislature may authorize contributions to the members' accounts for a biennium through budget appropriation.

NEW SECTION. Sec. 206. The member's account shall be invested by the state investment board unless the member elects to self direct investments as authorized by the board. Members who make this election shall pay the expenses for self-directed investment.

NEW SECTION. Sec. 207. (1) If the member retires, becomes disabled, or otherwise terminates employment, the balance in the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the board.

(2) If the member dies while in service, the balance of the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the board. The distribution shall be made to such person or persons 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, the balance of the member's account in the retirement system, less any amount identified as owing to an obligee upon withdrawal of such account balance 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 is no surviving spouse, then to such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department.

(3) The distribution under subsections (1) or (2) of this section shall be less any amount identified as owing to an obligee upon withdrawal pursuant to a court order filed under RCW 41.50.670.

NEW SECTION. Sec. 208. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the various funds created by chapter . . . , Laws of 1995 (this act) and all moneys and investments and income thereof, is hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and that has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

NEW SECTION. Sec. 209. (1) The retirement plan created by this chapter shall be administered so as to comply with the federal Internal Revenue Code, Title 26 U.S.C., and specifically with plan qualification requirements imposed on governmental plans by section 401(a) of the Internal Revenue Code.

(2) Any section or provision of this chapter which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy requirements imposed by section 401(a) of the Internal Revenue Code.

(3) If any section or provision of this chapter is found to be in conflict with the plan qualification requirements for governmental plans in section 401(a) of the Internal Revenue Code, the conflicting part of this chapter is hereby inoperative solely to the extent of the conflict, and such finding shall not affect the operation of the remainder of this chapter.

NEW SECTION. Sec. 210. Sections 201 through 209 of this act shall constitute a new chapter in Title 41 RCW.

PART III MISCELLANEOUS

NEW SECTION. Sec. 301. A new section is added to chapter 41.50 RCW to read as follows:

(1) The employee retirement benefits board is created within the department of retirement systems.

(2) The board shall be composed of eight members appointed by the governor and one ex officio member as follows:

(a) Three members representing the public employees' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be two years for the retired member, one year for one active member, and three years for the remaining active member.

(b) Three members representing the teachers' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(c) Two members with experience in defined contribution plan administration. The initial term for these members shall be two years for one member and three years for the remaining member.

(d) The director of the department shall serve ex officio and shall be the chair of the board.

(3) After the initial appointments, members shall be appointed to three-year terms.

(4) The board shall meet at least quarterly during the calendar year, at the call of the chair.

(5) Members of the board shall serve without compensation but shall receive travel expenses as provided for in RCW 43.03.050 and 43.03.060. Such travel expenses shall be reimbursed by the department from the retirement system expense fund.

(6) The board shall adopt rules governing its procedures and conduct of business.

(7) The actuary shall perform all actuarial services for the board and provide advice and support.

(8) The state investment board shall provide advice and support to the board.

NEW SECTION. Sec. 302. A new section is added to chapter 41.50 RCW to read as follows:

The board shall adopt rules as necessary and exercise all the powers and perform all duties prescribed by law with respect to:

(1) The preselection of options for members to choose from for self-directed investment deemed by the board to be in the best interest of the member. At the board's request, the state investment board may provide investment options for purposes of this subsection;

(2) The selection of optional benefit payment schedules available to members and survivors of members upon the death, disability, retirement, or termination of the member. The optional benefit payments may include but not be limited to: Fixed and participating annuities, joint and survivor annuities, and payments that bridge to social security or defined benefit plan payments;

(3) Approval of actuarially equivalent annuities that may be purchased from the combined plan II and plan III funds under RCW 41.50.075 (2) or (3);

(4) Determination of the basis for administrative charges to the self-directed investment fund to offset self-directed account expenses; and

(5) Selection of investment options for the deferred compensation program.

NEW SECTION. Sec. 303. A new section is added to chapter 41.32 RCW under the subchapter heading "Plan II" to read as follows:

(1) Every plan II member employed by an employer in an eligible position may make an irrevocable option to transfer to plan III. For those who elect to transfer:

(a) All service credit in plan II shall be transferred to the defined benefit portion of plan III.

(b) The accumulated contributions in plan II shall be transferred to the member's account in the defined contribution portion established in sections 201 through 209 of this act, pursuant to procedures developed by the department and subject to section 209 of this act.

(c) A member vested on the effective date of this act under plan II shall be automatically vested in plan III upon transfer.

(d) Members employed by an employer in an eligible position on January 1, 1998, who request to transfer to plan III by January 1, 1998, shall have their account in the defined contribution portion of plan III, other than those accumulated contributions attributable to restorations made under RCW 41.50.165(2), increased by twenty percent of their plan II accumulated contributions as of January 1, 1996. If the member who requests to transfer dies before January 1, 1998, the additional payment provided by this subsection shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department.

(e) The legislature reserves the right to discontinue the right to transfer under this section.

(2) This subsection shall also apply to dual members as provided in section 320 of this act.

(3) Any member who elects to transfer to plan III and has eligible unreturned withdrawn contributions in plan II, may subsequently restore such contributions under the provisions of RCW 41.32.825. The restored plan II service credit will be automatically transferred to plan III. Contributions restored will be transferred to the member's account in plan III.

(4) Anyone previously retired from plan II is prohibited from transferring to plan III.

NEW SECTION. Sec. 304. A new section is added to chapter 41.32 RCW under the subchapter heading "Plan II" to read as follows:

Any person who elected pursuant to RCW 41.32.032(2)(a) to remain a member of the public employees' retirement system under chapter 41.40 RCW may make an irrevocable option to transfer to plan III pursuant to section 303 of this act, PROVIDED THAT:

(1) Only service credit for previous periods of employment in a position covered by RCW 41.32.010 is transferred to plan III;

(2) Equivalent accumulated employee and employer contributions attributable to service covered by subsection (1) of this section are transferred to plan III;

(3) Employer contributions transferred under this section shall be paid into the teachers' retirement system combined plan II and III fund.

Any person, not employed as an educational staff associate on the effective date of this act may choose, within one year of the person's return to employment as a teacher, to transfer to plan III under this section.

Sec. 305. RCW 41.45.010 and 1989 c 273 s 1 are each amended to read as follows:

It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' retirement system, chapter 41.32 RCW; the law enforcement officers' and fire fighters' retirement system, chapter 41.26 RCW; and the Washington state patrol retirement system, chapter 43.43 RCW.

The funding process established by this chapter is intended to achieve the following goals:

(1) To continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II as provided by law;

(2) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, and the law enforcement officers' and fire fighters' retirement system plan I not later than June 30, 2024;

(3) To establish predictable long-term employer contribution rates which will remain a relatively constant proportion of the future state budgets; and

(4) To fund, to the extent feasible, benefit increases for plan I members and all benefits for plan II and III members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service.

Sec. 306. RCW 41.45.020 and 1989 c 273 s 2 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) "Council" means the economic and revenue forecast council created in RCW (~~(82.01.130)~~) 82.33.010.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and fire fighters' retirement system plan I" and "law enforcement officers' and fire fighters' retirement system plan II" mean(s) the benefits and funding provisions (~~(covering persons who first became members of the law enforcement officers' and fire fighters' retirement system prior to October 1, 1977.~~

~~(4) "Law enforcement officers' and fire fighters' retirement system plan II" means the benefits and funding provisions covering persons who first became members of the law enforcement officers' and fire fighters' retirement system on or after October 1, 1977)~~ under chapter 41.26 RCW.

~~((5)) (4) "Public employees' retirement system plan I" ((means the benefits and funding provisions covering persons who first became members of the public employees' retirement system prior to October 1, 1977.~~

~~(6) "Public employees' retirement system plan II" means the benefits and funding provisions covering persons who first became members of the public employees' retirement system on or after October 1, 1977)~~ and "public employees' retirement system plan II" mean the benefits and funding provisions under chapter 41.40 RCW.

~~((7)) (5) "Teachers' retirement system plan I," "teachers' retirement system plan II," and "teachers' retirement system plan III" mean(s) the benefits and funding provisions ((covering persons who first became members of the teachers' retirement system prior to October 1, 1977.~~

~~(8) "Teachers' retirement system plan II" means the benefits and funding provisions covering persons who first became members of the teachers' retirement system on or after October 1, 1977)~~ under chapter 41.32 RCW.

~~((9)) (6) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.~~

(7) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

~~((10)) (8) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.~~

~~((11)) (9) "State retirement systems" means the retirement systems listed in RCW 41.50.030.~~

**Sec. 307. RCW 41.45.030 and 1993 c 519 s 17 are each amended to read as follows:*

(1) Beginning September 1, ~~((1989))~~ 1995, and every ~~((six))~~ two years thereafter, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system. The council shall review this and such other information as it may require.

(2) ~~((The council shall review the information submitted by the state actuary and))~~ By December 31, 1995, and every two years thereafter, the council, by affirmative vote of five councilmembers, shall adopt the following long-term economic assumptions:

(a) Growth in system membership;

(b) Growth in salaries, exclusive of merit or longevity increases;

(c) Growth in inflation; and

(d) Investment rate of return.

(3) The council shall work with the department of retirement systems, the state actuary, and the executive director of the state investment board, and shall consider long-term historical averages, in developing the economic assumptions. The assumptions adopted by the council shall be used by the state actuary in conducting valuation studies of the state retirement systems.

~~((3) The council may utilize information provided by the state actuary and such other information as it may request.))~~

**Sec. 307 was vetoed. See message at end of chapter.*

Sec. 308. RCW 41.45.050 and 1989 c 273 s 5 are each amended to read as follows:

(1) ~~((Beginning September 1, 1990,))~~ Employers of members of the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system shall make contributions to those systems based on the rates established in RCW 41.45.060 and 41.45.070.

(2) ~~((Beginning September 1, 1990,))~~ The state shall make contributions to the law enforcement officers' and fire fighters' retirement system based on the rates established in RCW 41.45.060 and 41.45.070. The state treasurer shall transfer the required contributions each month on the basis of salary data provided by the department.

(3) ~~((Beginning September 1, 1990,))~~ The department shall bill employers, and the state shall make contributions to the law enforcement officers' and fire fighters' retirement system, using the combined rates established in RCW 41.45.060 and 41.45.070 regardless of the level of pension funding provided in the biennial budget. Any member of an affected retirement system may, by mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section.

(4) The contributions received for the public employees' retirement system shall be allocated between the public employees' retirement system plan I fund and public employees' retirement system plan II fund as follows: The contributions necessary to fully fund the public employees' retirement system

plan II employer contribution required by RCW 41.40.650 shall first be deposited in the public employees' retirement system plan II fund. All remaining public employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan I fund.

~~((The employer contributions for the teachers' retirement system, and the state contributions for the law enforcement officers' and fire fighters' retirement system shall be allocated in the same manner as the public employees' retirement system and in accordance with the law enforcement officers' and fire fighters' retirement system plan II and the teachers' retirement system plan II contribution rates required by RCW 41.26.450 and 41.32.775 respectively))~~ (5) The contributions received for the teachers' retirement system shall be allocated between the plan I fund and the combined plan II and plan III fund as follows: The contributions necessary to fully fund the combined plan II and plan III employer contribution shall first be deposited in the combined plan II and plan III fund. All remaining teachers' retirement system employer contributions shall be deposited in the plan I fund.

(6) The contributions received under RCW 41.26.450 for the law enforcement officers' and fire fighters' retirement system shall be allocated between the law enforcement officers' and fire fighters' retirement system plan I and the law enforcement officers' and fire fighters' retirement system plan II fund as follows: The contributions necessary to fully fund the law enforcement officers' and fire fighters' retirement system plan II employer contributions shall be first deposited in the law enforcement officers' and fire fighters' retirement system plan II fund. All remaining law enforcement officers' and fire fighters' retirement system employer contributions shall be deposited in the law enforcement officers' and fire fighters' retirement system plan I fund.

Sec. 309. RCW 41.45.060 and 1993 c 519 s 19 are each amended to read as follows:

(1) ~~((For the period of September 1, 1993, through August 31, 1995, the basic state contribution rate for the law enforcement officers' and fire fighters' retirement system, and the basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system shall be as determined in the 1991 valuations prepared by the office of the state actuary.))~~ The state actuary shall provide actuarial valuation results based on the assumptions adopted under RCW 41.45.030.

(2) Not later than September 30, ~~((1994))~~ 1996, and every two years thereafter~~((+~~

~~((a)))~~, consistent with the assumptions adopted under RCW 41.45.030, the council shall adopt ((the contributions to be used in the ensuing biennial period for the systems specified in subsection (1) of this section.

~~((b)))~~ both: (a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system; and (b) basic employer contribution rates for the public employees' retirement system plan I, the teachers' retirement

system plan I, and the Washington state patrol retirement system to be used in the ensuing biennial period.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and the unfunded liability of the Washington state patrol retirement system not later than June 30, 2024; and

(b) To also continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II in accordance with RCW 41.40.650, 41.26.450, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan II and III employer contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted ((under (a) of this subsection)).

((e)) (6) The director of the department of retirement systems shall collect those rates adopted by the council ((under this chapter)).

Sec. 310. RCW 41.45.070 and 1990 c 18 s 2 are each amended to read as follows:

(1) ~~((Beginning September 1, 1991,))~~ In addition to the basic employer contribution rate established in RCW 41.45.060, the department shall also charge employers of public employees' retirement system, teachers' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems ~~((after January 1, 1990))~~. The supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) ~~((Beginning September 1, 1991,))~~ In addition to the basic state contribution rate established in RCW 41.45.060 for the law enforcement officers' and fire fighters' retirement system the department shall also establish a supplemental rate to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system ~~((after January 1, 1990))~~. This supplemental rate shall be calculated by the state actuary and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and Washington state patrol retirement

system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan II, the teachers' retirement system plan II and plan III, or the law enforcement officers' and fire fighters' retirement system plan II, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.40.650, 41.32.775, or 41.26.450, respectively.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan I and the teachers' retirement system plan I shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

NEW SECTION. Sec. 311. A new section is added to chapter 41.45 RCW to read as follows:

(1) The required contribution rate for members of the plan II teachers' retirement system shall be fixed at the rates in effect on the effective date of this act, subject to the following:

(a) Beginning September 1, 1998, except as provided in (b) of this subsection, the employee contribution rate shall not exceed the employer plan II and III rates adopted under RCW 41.45.060 and 41.45.070 for the teachers' retirement system;

(b) In addition, the employee contribution rate for plan II shall be increased by fifty percent of the contribution rate increase caused by any plan II benefit increase passed after the effective date of this act.

(2) The required plan II and III contribution rates for employers shall be adopted in the manner described in RCW 41.45.060.

Sec. 312. RCW 41.50.075 and 1991 c 35 s 108 are each amended to read as follows:

(1) Two funds are hereby created and established in the state treasury to be known as the Washington law enforcement officers' and fire fighters' system plan I retirement fund, and the Washington law enforcement officers' and fire fighters' system plan II retirement fund which shall consist of all moneys paid into them in accordance with the provisions of this chapter and chapter 41.26 RCW, whether such moneys take the form of cash, securities, or other assets. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the

benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan II.

(2) All of the assets of the Washington state teachers' retirement system shall be credited according to the purposes for which they are held, to two funds to be maintained in the state treasury, namely, the teachers' retirement system plan I fund and the teachers' retirement system combined plan II and III fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan I, and the combined plan II and III fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan II and III.

(3) There is hereby established in the state treasury two separate funds, namely the public employees' retirement system plan I fund and the public employees' (~~retirement system~~) retirement system plan II fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan II.

(4) There is hereby established in the state treasury the plan III defined contribution fund which shall consist of all contributions and earnings paid on behalf of members, except as otherwise provided.

Sec. 313. RCW 41.50.110 and 1990 c 8 s 3 are each amended to read as follows:

(1) Notwithstanding any provision of law to the contrary, the retirement system expense fund is hereby redesignated as the department of retirement systems expense fund from which shall be paid the expenses of the administration of the department and the expenses of administration of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.— (sections 201 through 209 of this act), and 43.43 RCW.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 41.26.030, 41.32.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 41.26.030, 41.32.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to

each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

~~((3) All employers shall pay a standard fee to the department to cover the cost of administering the system.))~~ (5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses incurred pursuant to section 206 of this act shall be deducted from the defined contribution fund in accordance with rules established by the board under section 302 of this act.

NEW SECTION. Sec. 314. A new section is added to chapter 41.50 RCW to read as follows:

(1) "Employee" as used in this section and section 315 of this act includes all full-time, part-time, and career seasonal employees of the state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of the government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and of the superior and district courts; and members of the state legislature or of the legislative authority of any county, city, or town.

(2) The state, through the department, and any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body is authorized to contract with an employee to defer a portion of that employee's income, which deferred portion shall in no event exceed the amount allowable under 26 U.S.C. Sec. 457, and deposit or invest such deferred portion in a credit union, savings and loan association, bank, or mutual savings bank or purchase life insurance, shares of an investment company, or fixed and/or variable annuity contracts from any insurance company or any investment company licensed to contract business in this state.

(3) The department can provide such plans as the employee retirement benefits board, established under section 301 of this act, deems are in the interests of state employees. In addition to the types of investments described in this section, the department may invest the deferred portion of an employee's income, without limitation as to amount, in any of the class of investments described in RCW 43.84.150 as in effect on January 1, 1981. Any income deferred under such a plan shall continue to be included as regular compensation, for the purpose of computing the state or local retirement and pension benefits earned by any employee.

(4) Coverage of an employee under a deferred compensation plan under this section shall not render such employee ineligible for simultaneous membership and participation in any pension system for public employees.

NEW SECTION. Sec. 315. A new section is added to chapter 41.50 RCW to read as follows:

(1) 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.

(2) The amount of compensation deferred by employees under agreements entered into under the authority contained in section 314 of this act 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 the department. The deferred compensation principal account shall be used to carry out the purposes of section 314 of this act. All eligible state employees shall be given the opportunity to participate in agreements entered into by the department under section 314 of this act. State agencies shall cooperate with the department in providing employees with the opportunity to participate.

(3) Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the department under section 314 of this act, 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.

(4) 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.

(5) The state investment board, at the request of the employee retirement benefits board as established under section 301 of this act, 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.

(6) The deferred compensation administrative account is hereby created in the state treasury. All expenses of the department 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.

(7) In addition to the duties specified in this section and section 314 of this act, the department shall administer the salary reduction plan established in RCW 41.04.600 through 41.04.645.

(8) The department 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 section 314 of this act and this section.

(9) The department shall file an annual report of the financial condition, transactions, and affairs of the deferred compensation plans under its 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.

(10) Members of the employee retirement benefits board established under section 301 of this act shall be deemed to stand in a fiduciary relationship to the employees participating in the deferred compensation plans created under section 314 of this act and this section 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.

(11) The department may adopt rules necessary to carry out the purposes of section 314 of this act and this section.

Sec. 316. RCW 41.50.030 and 1975-'76 2nd ex.s. c 105 s 5 are each amended to read as follows:

(1) As soon as possible but not more than one hundred and eighty days after March 19, 1976, there is transferred to the department of retirement systems, except as otherwise provided in this chapter, all powers, duties, and functions of:

((1)) (a) The Washington public employees' retirement system ((and the retirement board thereof));

~~((2))~~ (b) The Washington state teachers' retirement system ~~((and the board of trustees thereof));~~

~~((3))~~ (c) The Washington law enforcement officers' and fire fighters' retirement system ~~((and the retirement board thereof));~~

~~((4))~~ (d) The Washington state patrol retirement system ~~((and the retirement board thereof));~~

~~((5))~~ (e) The Washington judicial retirement system ~~((and the retirement board thereof));~~ and

~~((6))~~ (f) The state treasurer with respect to the administration of the judges' retirement fund imposed pursuant to chapter 2.12 RCW.

(2) On the effective date of this act there is transferred to the department all powers, duties, and functions of the deferred compensation committee.

(3) The department shall administer sections 201 through 209 of this act.

Sec. 317. RCW 41.50.050 and 1993 c 61 s 1 are each amended to read as follows:

The director shall:

(1) Have the authority to organize the department into not more than ~~((three))~~ four 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.

Sec. 318. RCW 41.50.060 and 1975-'76 2nd ex.s. c 105 s 8 are each amended to read as follows:

The director may delegate the performance of such powers, duties, and functions, other than those relating to rule making, to employees of the department, but the director shall remain and be responsible for the official acts of the employees of the department.

The director shall be responsible for the public employees' retirement system, the teachers' retirement system, the judicial retirement system, the law enforcement officers' and fire fighters' retirement system, and the Washington state patrol retirement system. The director shall also be responsible for the deferred compensation program.

Sec. 319. RCW 41.54.030 and 1990 c 192 s 2 are each amended to read as follows:

(1) A dual member(~~(s)~~) may combine service in all systems (~~(may be combined)~~) for the (~~(sole)~~) purpose of:

(a) Determining the member's eligibility to receive a service retirement allowance; and

(b) Qualifying for a benefit under section 115(3) of this act.

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age shall be either actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system, or the dual member may choose to defer the benefit until fully eligible.

NEW SECTION. Sec. 320. A new section is added to chapter 41.54 RCW to read as follows:

Any dual member who elects to transfer under section 303 of this act may subject to the provisions of this chapter:

(1) Similarly transfer any other prior plan II service credit to plan III of the same retirement system; or

(2) Combine service credit in all systems for purposes of vesting pursuant to section 303(1)(c) of this act.

NEW SECTION. Sec. 321. A new section is added to chapter 43.33A RCW to read as follows:

Pursuant to section 302 of this act, the state investment board, at the request of the employee retirement benefits board, is authorized to offer investment options for self-directed investment under plan III.

Sec. 322. RCW 41.04.440 and 1984 c 227 s 1 are each amended to read as follows:

(1) The sole purpose of RCW 41.04.445 and 41.04.450 is to allow the members of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.— (sections 201 through 209 of this act), and 43.43 RCW to enjoy the tax deferral benefits allowed under 26 USC 414(h). This act does not alter in any manner the provisions of RCW 41.26.450(~~(, 41.32.775)~~) and 41.40.650 which require that the member contribution rates shall be set so as to provide fifty percent of the cost(~~(s)~~) of the respective retirement plans.

(2) Should the legislature revoke any benefit allowed under (~~(this act)~~) 26 U.S.C. 414(h), no affected employee shall be entitled thereafter to receive such benefit as a matter of contractual right.

Sec. 323. RCW 41.04.445 and 1992 c 212 s 15 are each amended to read as follows:

(1) This section applies to all members who are:

(a) Judges under the retirement system established under chapter 2.10, 2.12, or 2.14 RCW;

(b) Employees of the state under the retirement system established by chapter 41.32, 41.40, or 43.43 RCW;

(c) Employees of school districts under the retirement system established by chapter 41.32 or 41.40 RCW, except for substitute teachers as defined by RCW 41.32.010;

(d) Employees of educational service districts under the retirement system established by chapter 41.32 or 41.40 RCW; or

(e) Employees of community college districts under the retirement system established by chapter 41.32 or 41.40 RCW.

(2) Only for compensation earned after the effective date of the implementation of this section and as provided by section 414(h) of the federal internal revenue code, the employer of all the members specified in subsection (1) of this section shall pick up only those member contributions as required under:

(a) RCW 2.10.090(1);

(b) RCW 2.12.060;

(c) RCW 2.14.090;

(d) RCW 41.32.263;

(e) RCW 41.32.350;

(f) ~~((RCW 41.32.775;~~

~~(g))~~ RCW 41.40.330 (1) and (3);

~~((h))~~ (g) RCW 41.40.650; ~~(and~~

~~(i))~~ (h) Section 207 of this act;

(i) RCW 43.43.300; and

(j) Section 204 of this act.

(3) Only for the purposes of federal income taxation, the gross income of the member shall be reduced by the amount of the contribution to the respective retirement system picked up by the employer.

(4) All member contributions to the respective retirement system picked up by the employer as provided by this section, plus the accrued interest earned thereon, shall be paid to the member upon the withdrawal of funds or lump-sum payment of accumulated contributions as provided under the provisions of the retirement systems.

(5) At least forty-five days prior to implementing this section, the employer shall provide:

(a) A complete explanation of the effects of this section to all members; and

(b) Notification of such implementation to the director of the department of retirement systems.

Sec. 324. RCW 41.04.450 and 1985 c 13 s 3 are each amended to read as follows:

(1) Employers of those members under chapters 41.26 ~~((and)),~~ 41.40, and 41.— (sections 201 through 209 of this act) RCW who are not specified in RCW

41.04.445 may choose to implement the employer pick up of all member contributions without exception under RCW 41.26.080(1), 41.26.450, 41.40.330(1), ~~((and))~~ 41.40.650, and chapter 41.— RCW (sections 201 through 209 of this act). If the employer does so choose, the employer and members shall be subject to the conditions and limitations of RCW 41.04.445 (3), (4), and (5) and RCW 41.04.455.

(2) An employer exercising the option under this section may later choose to withdraw from and/or reestablish the employer pick up of member contributions only once in a calendar year following forty-five days prior notice to the director of the department of retirement systems.

NEW SECTION. Sec. 325. The benefits provided pursuant to this act are not provided to employees as a matter of contractual right prior to the effective date of this act. The legislature retains the right to alter or abolish these benefits at any time prior to the date this act becomes effective.

NEW SECTION. Sec. 326. The following acts or parts of acts are each repealed:

- (1) RCW 41.04.250 and 1981 c 256 s 2, 1975 1st ex.s. c 274 s 2, 1973 1st ex.s. c 99 s 1, 1972 ex.s. c 19 s 1, & 1971 ex.s. c 264 s 1;
- (2) RCW 41.04.255 and 1991 c 249 s 2 & 1982 c 107 s 2;
- (3) RCW 41.04.260 and 1993 c 34 s 2 & 1991 sp.s. c 13 s 101;
- (4) RCW 41.32.775 and 1990 c 274 s 9, 1989 c 273 s 19, 1986 c 268 s 2, 1984 c 184 s 11, & 1977 ex.s. c 293 s 6;
- (5) RCW 41.45.040 and 1993 c 519 s 18 & 1989 c 273 s 4;
- (6) RCW 41.45.0601 and 1993 c 519 s 20 & 1992 c 239 s 1;
- (7) RCW 41.45.901 and 1989 c 273 s 33;
- (8) RCW 41.50.032 and 1984 c 184 s 15 & 1982 c 163 s 9; and
- (9) RCW 41.50.250 and 1991 c 35 s 72, 1989 c 273 s 21, 1981 c 3 s 32, 1969 c 128 s 4, 1963 c 174 s 6, 1955 c 220 s 2, 1953 c 200 s 3, 1949 c 240 s 5, & 1947 c 274 s 9.

NEW SECTION. Sec. 327. This act shall take effect July 1, 1996.

NEW SECTION. Sec. 328. Part headings and subchapter headings as used in this act constitute no part of the law.

Passed the House April 18, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 5, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 5, 1995.

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

"I am returning herewith, without my approval as to section 307, Engrossed Substitute House Bill No. 1206 entitled:

"AN ACT Relating to creating new retirement systems;"

Engrossed Substitute House Bill No. 1206 creates a new Teachers' Retirement System, Plan III. I strongly favor the direction this bill takes in providing more career

flexibility and retirement options for our teachers. Section 307 alters the timing for adoption of economic assumptions used in pension valuations from every six years to every two years. The language of section 307 produces the same outcome as that of section 1 of Engrossed House Bill 1131, which is preferable text. Vetoing section 307 avoids an unnecessary double amendment.

For these reasons, I have vetoed section 307 of Engrossed Substitute House Bill No. 1206.

With the exception of section 307, Engrossed Substitute House Bill No. 1206 is approved."

CHAPTER 240

[House Bill 1425]

LAW ENFORCEMENT PEER COUNSELOR CONFIDENTIALITY

AN ACT Relating to privileged communications; and amending RCW 5.60.060.

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

Sec. 1. RCW 5.60.060 and 1989 c 271 s 301 are each amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 70.96A or 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.250, a physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer making the communication, be compelled to testify about any communication made to the counselor by the officer while receiving counseling. The counselor must be designated as such by the sheriff, police chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, or civilian employee of a law enforcement agency, who has received training to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

Passed the House April 19, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 241

[House Bill 1858]

OFFICE OF CRIME VICTIMS ADVOCACY ESTABLISHED

AN ACT Relating to the office of crime victims advocacy; and adding a new section to chapter 43.280 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.280 RCW to read as follows:

The office of crime victims advocacy is established in the department of community, trade, and economic development. The office shall assist communities in planning and implementing services for crime victims, advocate on behalf of crime victims in obtaining needed services and resources, and advise local and state governments on practices, policies, and priorities that impact crime victims. In addition, the office shall administer grant programs for sexual assault treatment and prevention services, as authorized in this chapter.

Passed the House April 19, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 242

[Substitute House Bill 2058]

UNEMPLOYMENT COMPENSATION—INDEPENDENT CONTRACTOR SELLERS OF TRAVEL

AN ACT Relating to independent contractors or outside agents who sell or arrange for travel services; adding a new section to chapter 50.04 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 50.04 RCW to read as follows:

The term "employment" shall not include service performed by an outside agent who sells or arranges for travel services that are provided to a travel agent as defined and registered under RCW 19.138.021, to the extent the outside agent is compensated by commission.

NEW SECTION. Sec. 2. 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.

Passed the House March 10, 1995.

Passed the Senate April 21, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 243

[Substitute Senate Bill 5089]

911 COMPATIBILITY

AN ACT Relating to 911 compatibility with private telecommunications systems and private shared telecommunications services; amending RCW 80.04.010 and 43.63A.320; adding new sections to chapter 80.36 RCW; adding a new section to chapter 28A.150 RCW; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding a new section to chapter 36.32 RCW; adding new sections to chapter 38.52 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 that citizens of the state increasingly rely on the dependability of enhanced 911, a system that allows the person answering an emergency call to immediately determine the location of the emergency without the need of the caller to speak. The legislature further finds that in some cases, calls made from telephones connected to private telephone systems may not be precisely located by the answerer, eliminating some of the benefit of enhanced 911, and that this condition could additionally imperil citizens calling from these locations in an emergency. The legislature also finds that until national standards have been developed to address this condition, information-forwarding requirements should be mandated for only those settings with the most risk, including schools, residences, and some business settings.

Sec. 2. RCW 80.04.010 and 1991 c 100 s 1 are each amended to read as follows:

As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Automatic location identification" means a system by which information about a caller's location, including the seven-digit number or ten-digit number used to place a 911 call or a different seven-digit number or ten-digit number to which a return call can be made from the public switched network, is forwarded to a public safety answering point for display.

"Automatic number identification" means a system that allows for the automatic display of the seven-digit or ten-digit number used to place a 911 call.

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission,

distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"Private switch automatic location identification service" means a service that enables automatic location identification to be provided to a public safety answering point for 911 calls originating from station lines served by a private switch system.

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

"Telecommunications 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, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

"Water 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 water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership or control, regardless of location or corporate designation. "Control" as used herein shall be defined by the commission by rule and shall not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company. "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission

pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

"Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of health.

The term "service" is used in this title in its broadest and most inclusive sense.

NEW SECTION. Sec. 3. A new section is added to chapter 80.36 RCW to read as follows:

By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any private shared telecommunications services provider that provides service to residential customers shall assure that the telecommunications system is connected to the public switched network such that calls to 911 result in automatic location identification for each residential unit in a format that is compatible with the existing or planned county enhanced 911 system.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.150 RCW to read as follows:

By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, all common and public schools located in counties that provide enhanced 911 service shall provide persons using school facilities direct access to telephones that are connected to the public switched network such that calls to 911 result in automatic location identification for each telephone in a format that is

compatible with the existing and planned county enhanced 911 system during all times that the facility is in use. Any school district acquiring a private telecommunications system that allows connection to the public switched network after January 1, 1997, shall assure that the telecommunications system is connected to the public switched network such that calls to 911 result in automatic location identification for each telephone in a format that is compatible with the existing or planned county enhanced 911 system.

NEW SECTION. Sec. 5. A new section is added to chapter 80.36 RCW to read as follows:

By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any commercial shared services provider of private shared telecommunications services for hire or resale to the general public to multiple unaffiliated business users from a single system shall assure that such a system is connected to the public switched network such that calls to 911 result in automatic location identification for each telephone in a format that is compatible with the existing or planned county enhanced 911 system. This section shall apply only to providers of service to businesses containing a physical area exceeding twenty-five thousand square feet, or businesses on more than one floor of a building, or businesses in multiple buildings.

NEW SECTION. Sec. 6. A new section is added to chapter 35.21 RCW to read as follows:

No city or town may enact or enforce an ordinance or regulation mandating automatic number identification or automatic location identification for a private telecommunications system or for a provider of private shared telecommunications services.

NEW SECTION. Sec. 7. A new section is added to chapter 35A.21 RCW to read as follows:

No code city may enact or enforce an ordinance or regulation mandating automatic number identification or automatic location identification for a private telecommunications system or for a provider of private shared telecommunications services.

NEW SECTION. Sec. 8. A new section is added to chapter 36.32 RCW to read as follows:

No county may enact or enforce an ordinance or regulation mandating automatic number identification or automatic location identification for a private telecommunications system or for a provider of private shared telecommunications services.

NEW SECTION. Sec. 9. A new section is added to chapter 38.52 RCW to read as follows:

The state enhanced 911 coordination office may develop and implement public education materials regarding the capability of specific equipment used as part of a private telecommunications system or in the provision of private shared telecommunications services to forward automatic location identification and automatic number identification.

NEW SECTION. Sec. 10. A new section is added to chapter 38.52 RCW to read as follows:

The state enhanced 911 coordination office and the enhanced 911 advisory committee may participate in efforts to set uniform national standards for automatic number identification and automatic location identification data transmission for private telecommunications systems and private shared telecommunications services. The enhanced 911 advisory committee shall report to the legislature by January 1, 1997, the progress of such standards development and shall make recommendations on steps to be taken if such standards have not been adopted.

Sec. 11. RCW 43.63A.320 and 1993 c 280 s 69 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) Recommend to the director of community, trade, and economic development rules on minimum information requirements of automatic location identification for the purposes of enhanced 911 emergency service;
- (6) 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))~~ (7) Promote mutual aid and disaster planning for fire services in this state;
- ~~((7))~~ (8) Assure the dissemination of information concerning the amount of fire damage including that damage caused by arson, and its causes and prevention;

~~((8))~~ (9) 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))~~ (10) Adopt a state fire training and education master plan;

~~((10))~~ (11) 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))~~ (12) 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))~~ (13) 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))~~ (14) 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))~~ (15) 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.

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. Section 11 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, 1995.

Passed the Senate April 19, 1995.

Passed the House April 5, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 244

[Substitute Senate Bill 5118]

RETIREMENT—CALCULATION OF EXCESS COMPENSATION

AN ACT Relating to the calculation of excess compensation for retirement purposes; amending RCW 41.50.150; reenacting and amending RCW 41.40.010; and adding a new section to chapter 41.50 RCW.

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

Sec. 1. RCW 41.50.150 and 1984 c 184 s 1 are each amended to read as follows:

(1) The employer of any employee whose retirement benefits are based in part on excess compensation, as defined in this section, shall, upon receipt of a billing from the department, pay into the appropriate retirement system the present value at the time of the employee's retirement of the total estimated cost of all present and future benefits from the retirement system attributable to the excess compensation. The state actuary shall determine the estimated cost using the same method and procedure as is used in preparing fiscal note costs for the legislature. However, the director may in the director's discretion decline to bill the employer if the amount due is less than fifty dollars. Accounts unsettled within thirty days of the receipt of the billing shall be assessed an interest penalty of one percent of the amount due for each month or fraction thereof beyond the original thirty-day period.

(2) "Excess compensation," as used in this section, includes any payment that was used in the calculation of the employee's retirement allowance, except regular salary and overtime((?)) compensated at up to twice the regular rate of pay. Excess compensation includes but is not limited to:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave((?)). "Cash out" for purposes of this subsection means any payment in lieu of an accrual of annual leave or any payment added to salary or wages, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave((?));

(c) A payment for, or in lieu of, any personal expense((and)) or transportation allowance;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular rate of pay; and

(e) Any other termination or severance payment ((used in the calculation of the employee's retirement allowance. Any payment which is made pursuant to any labor agreement currently in force shall not be deemed excess compensation. Any payments in excess of regular salary and overtime, and two hundred forty hours of unused annual leave made after the expiration of a current contract shall be excess compensation)).

(3) This section applies to the retirement systems listed in RCW 41.50.030 and to retirements occurring on or after March 15, 1984. Nothing in this section is intended to amend or determine the meaning of any definition in chapter 2.10, 2.12, 41.26, 41.32, 41.40, or 43.43 RCW or to determine in any manner what

payments are includable in the calculation of a retirement allowance under such chapters.

(4) An employer is not relieved of liability under this section because of the death of any person either before or after the billing from the department.

NEW SECTION. Sec. 2. A new section, which shall be uncodified, is added to chapter 41.50 RCW to read as follows:

The definition of "cash out" added to RCW 41.50.150(2)(a) by this act is a clarification of the legislature's original intent regarding the meaning of the term. The definition of "cash out" applies retroactively to payments made before the effective date of this act.

Sec. 3. RCW 41.40.010 and 1994 c 298 s 2, 1994 c 247 s 5, 1994 c 197 s 23, and 1994 c 177 s 8 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; 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. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(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. ~~((Compensation that a member receives for being in standby status is also compensation earnable, subject to the conditions of this subsection. A member is in standby status when not being paid for time actually worked and only when both of the following conditions exist: (i) The member is required to be present at, or in the immediate vicinity of, a specified location; and (ii) the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is regular salary for the purposes of RCW 41.50.150(2).))~~

(A) "Compensation earnable" for plan I members also includes the following actual or imputed payments, which are not paid for personal services:

(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 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;

(II) 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.

(III) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(IV) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038; ~~((and))~~

(V) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(VI) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is regular salary for the purposes of RCW 41.50.150(2).

(B) "Compensation earnable" does not include:

(I) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(II) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(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 or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. ~~((Compensation that a member receives for being in standby status is also compensation earnable, subject to the conditions of this subsection. A member is in standby status when not being paid for time actually worked and only when both of the following conditions exist: (i) The member is required to be present at, or in the immediate vicinity of, a specified location; and (ii) the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is regular salary for the purposes of RCW 41.50.150(2).))~~

"Compensation earnable" for plan II members also includes the following actual or imputed payments, which are not paid for personal services:

(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 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;

(B) 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 (b)(ii)(B)(II) of this subsection is greater than compensation earnable under (b)(ii)(B)(I) of this subsection shall be paid by the member for both member and employer contributions;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038; ~~((and))~~

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is regular salary for the purposes of RCW 41.50.150(2).

(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. Time spent in standby status, whether compensated or not, is not service.

(i) 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.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If 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.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan I "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(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. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) 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.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If 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.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan II "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

- (A) Less than eleven days equals one-quarter service credit month;
 - (B) Eleven or more days but less than twenty-two days equals one-half service credit month;
 - (C) Twenty-two days equals one service credit month;
 - (D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;
 - (E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.
- (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 or her 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, including any amount paid under RCW 41.50.165(2), 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 person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member. A person is in receipt of a retirement allowance as defined in subsection (21) of this section or other benefit as provided by this chapter when the department mails, causes to be mailed, or otherwise transmits the retirement allowance warrant.

(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.

(35) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(36) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(37) "Index B" means the index for the year prior to index A.

(38) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(39) "Adjustment ratio" means the value of index A divided by index B.

Passed the Senate April 20, 1995.

Passed the House April 14, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 245

[Senate Bill 5120]

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT
SYSTEM—DEATH BENEFITS

AN ACT Relating to death benefits under the law enforcement officers' and fire fighters' retirement system; amending RCW 41.26.510 and 41.26.540; and declaring an emergency.

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

Sec. 1. RCW 41.26.510 and 1993 c 236 s 3 are each amended to read as follows:

(1) Except as provided in RCW 11.07.010, 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)(i) 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; or

(ii) If the member dies on or after July 25, 1993, one hundred fifty percent of 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. An accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(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. 2. RCW 41.26.540 and 1993 c 517 s 6 are each amended to read as follows:

(1)(a) A member who has completed less than ten years of service, who ceases to be an employee of an employer except by service or disability retirement, may request a refund of the member's accumulated contributions.

(b) A member who has completed ten or more years of service, who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(2) The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.26.410 through 41.26.550.

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 19, 1995.
 Passed the House April 6, 1995.
 Approved by the Governor May 5, 1995.
 Filed in Office of Secretary of State May 5, 1995.

CHAPTER 246

[Engrossed Substitute Senate Bill 5219]

DOMESTIC VIOLENCE PREVENTION

AN ACT Relating to domestic violence; amending RCW 26.50.030, 26.50.035, 26.50.040, 26.50.050, 26.50.060, 26.50.070, 26.50.080, 26.50.090, 26.50.095, 26.50.100, 26.50.110, 26.50.115, 26.50.125, 10.99.020, 10.99.030, 10.99.040, 26.09.050, 26.09.060, 26.09.300, 26.10.040, 26.10.115, 26.10.220, 26.26.130, 26.26.137, 4.24.130, 10.14.080, and 36.18.010; reenacting and amending RCW 26.50.010 and 10.31.100; adding new sections to chapter 26.50 RCW; adding a new section to chapter 26.26 RCW; adding a new section to chapter 10.14 RCW; creating a new section; prescribing penalties; and declaring an emergency.

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

Sec. 1. RCW 26.50.010 and 1992 c 111 s 7 and 1992 c 86 s 3 are each reenacted and amended to read as follows:

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; ~~((or))~~ (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a respondent sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the superior, district, and municipal courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.

NEW SECTION. **Sec. 2.** A new section is added to chapter 26.50 RCW to read as follows:

(1) Any order available under this chapter may be issued in actions under chapter 26.09, 26.10, or 26.26 RCW. If an order for protection is issued in an action under chapter 26.09, 26.10, or 26.26 RCW, the order shall be issued on the forms mandated by RCW 26.50.035(1). An order issued in accordance with this subsection is fully enforceable and shall be enforced under the provisions of this chapter.

(2) If a party files an action under chapter 26.09, 26.10, or 26.26 RCW, an order issued previously under this chapter between the same parties may be consolidated by the court under that action and cause number. Any order issued under this chapter after consolidation shall contain the original cause number and the cause number of the action under chapter 26.09, 26.10, or 26.26 RCW. Relief under this chapter shall not be denied or delayed on the grounds that the relief is available in another action.

Sec. 3. RCW 26.50.030 and 1992 c 111 s 2 are each amended to read as follows:

There shall exist an action known as a petition for an order for protection in cases of domestic violence.

(1) A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in RCW 26.27.090.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns petitioner and respondent in accordance with RCW 26.50.060(~~(3)~~)(4).

(3) Within ninety days of receipt of the master copy from the administrator for the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) ~~((A)) No filing fee ((of twenty dollars shall)) may be charged for proceedings under this section. ((No filing fee may be charged for: (a) A petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought; or (b) the transfer of a case from district or municipal court to superior court under RCW 26.50.020(2).))~~ Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

Sec. 4. RCW 26.50.035 and 1993 c 350 s 2 are each amended to read as follows:

(1) By July 1, 1994, the administrator for the courts shall develop and prepare instructions and informational brochures required under RCW 26.50.030(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, 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.))~~ The administrator for the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then 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 the languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by January 1, 1997.

(6) The administrator for the courts shall update the instructions, brochures, standard petition and order for protection forms, and court staff handbook when changes in the law make an update necessary.

Sec. 5. RCW 26.50.040 and 1985 c 303 s 4 are each amended to read as follows:

~~((1) Persons seeking relief under this chapter may file an application for leave to proceed in forma pauperis on forms supplied by the court. If the court determines that a petitioner lacks the funds to pay the costs of filing, the petitioner shall be granted leave to proceed in forma pauperis and no filing fee or any other court related fees shall be charged by the court to the petitioner for relief sought under this chapter. If the petitioner is granted leave to proceed in forma pauperis, then no fees for service may be charged to the petitioner.~~

~~(2) For the purpose of determining whether a petitioner has the funds available to pay the costs of filing an action under this chapter, the income of the household or family member named as the respondent is not considered.))~~ No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this chapter. Petitioners shall be provided the necessary number of certified copies at no cost.

Sec. 6. RCW 26.50.050 and 1992 c 143 s 1 are each amended to read as follows:

Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. The court may

schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further acts of domestic violence. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. Except as provided in RCW 26.50.085 and section 16 of this act, personal service shall be made upon the respondent not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or service by mail as provided in section 16 of this act. If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 26.50.070 ~~((and))~~, 26.50.085, and section 16 of this act.

Sec. 7. RCW 26.50.060 and 1994 sp.s. c 7 s 457 are each amended to read as follows:

(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling which the parties share ~~((or))~~, from the residence, workplace, or school of the petitioner, or from the daycare or school of a child;

(c) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(d) Order the respondent to participate in batterers' treatment;

(e) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

(f) Require the respondent to pay the ~~((filing fee and))~~ administrative court costs~~((, including))~~ and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee~~((--If the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent to pay the filing fee and costs, including services fees, to the county or municipality incurring the expense))~~;

(g) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(h) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring; ~~((and))~~

(i) Consider the provisions of RCW 9.41.800;

(j) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included; and

(k) Order use of a vehicle.

(2) ~~((Any relief granted by the order for protection, other than a judgment for costs, shall be for a fixed period not to exceed one year))~~ If ((the)) a restraining order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children ((that are not also the respondent's minor children)), and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either ((a)) grant relief for a fixed period ((not to exceed one year; (b) grant relief for a fixed period in excess of one year;)) or ((e)) enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in subsection (1)(f) of this section.

(4) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

Sec. 8. RCW 26.50.070 and 1994 sp.s. c 7 s 458 are each amended to read as follows:

(1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:

(a) Restraining any party from committing acts of domestic violence;

(b) Excluding any party from the dwelling shared or from the residence of the other until further order of the court;

(c) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;

(d) Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household; and

(e) Considering the provisions of RCW 9.41.800.

(2) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(3) The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

(4) An ex parte temporary order for protection shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 26.50.085 or by mail under section 16 of this act. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the

temporary order or not later than twenty-four days if service by publication or by mail is permitted. Except as provided in RCW 26.50.050 (~~and~~), 26.50.085, and section 16 of this act, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(5) Any order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into a state-wide judicial information system by the clerk of the court within one judicial day after issuance.

(6) If the court declines to issue an ex parte temporary order for protection the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte order of protection shall be filed with the court.

Sec. 9. RCW 26.50.080 and 1984 c 263 s 9 are each amended to read as follows:

(1) When an order is issued under this chapter upon request of the petitioner, the court may order a peace officer to accompany the petitioner and assist in placing the petitioner in possession of ((the dwelling or residence,)) those items indicated in the order or to otherwise assist in the execution of the order of protection. The order shall list all items that are to be included with sufficient specificity to make it clear which property is included. Orders issued under this chapter shall include a designation of the appropriate law enforcement agency to execute, serve, or enforce the order.

(2) Upon order of a court, a peace officer shall accompany the petitioner in an order of protection and assist in placing the petitioner in possession of all items listed in the order and to otherwise assist in the execution of the order.

Sec. 10. RCW 26.50.090 and 1992 c 143 s 6 are each amended to read as follows:

(1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (6) and (8) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If service by a sheriff or municipal peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

(5) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(6) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(7) ~~((Except in cases where the petitioner is granted leave to proceed in forma pauperis,))~~ Municipal police departments serving documents as required under this chapter may collect from respondents ordered to pay fees under RCW 26.50.060 the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(8) If the court previously entered an order allowing service ~~((by publication))~~ of the notice of hearing and temporary order of protection by publication pursuant to RCW 26.50.085 or by mail pursuant to section 16 of this act, the court may permit service by publication or by mail of the order of protection issued under RCW 26.50.060. Service by publication must comply with the requirements of RCW 26.50.085 and service by mail must comply with the requirements of section 16 of this act. The court order must state whether the court permitted service by publication or by mail.

NEW SECTION. Sec. 11. A new section is added to chapter 26.50 RCW to read as follows:

(1) Pursuant to chapter 2.42 RCW, an interpreter shall be appointed for any party who, because of a hearing or speech impairment, cannot readily understand or communicate in spoken language.

(2) Pursuant to chapter 2.43 RCW, an interpreter shall be appointed for any party who cannot readily speak or understand the English language.

(3) The interpreter shall translate or interpret for the party in preparing forms, participating in the hearing and court-ordered assessments, and translating any orders.

Sec. 12. RCW 26.50.095 and 1992 c 143 s 5 are each amended to read as follows:

Following completion of service by publication as provided in RCW 26.50.085 or by mail as provided in section 16 of this act, if the respondent fails to appear at the hearing, the court may issue an order of protection as provided in RCW 26.50.060. That order must be served pursuant to RCW 26.50.090, and forwarded to the appropriate law enforcement agency pursuant to RCW 26.50.100.

Sec. 13. RCW 26.50.100 and 1992 c 143 s 7 are each amended to read as follows:

(1) A copy of an order for protection granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system

available in this state used by law enforcement agencies to list outstanding warrants. The order shall remain in the computer for the period stated in the order. The law enforcement agency shall only expunge ((expired)) from the computer-based criminal intelligence information system orders ((from the computer system)) that are expired, vacated, or superseded. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The information entered into the computer-based criminal intelligence information system shall include notice to law enforcement whether the order was personally served or served by publication.

Sec. 14. RCW 26.50.110 and 1992 c 86 s 5 are each amended to read as follows:

(1) Whenever an order for protection is granted under this chapter and the respondent or person to be restrained knows of the order, a violation of the restraint provisions or of a provision excluding the person from a residence, workplace, school, or daycare is a gross misdemeanor. Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, workplace, school, or daycare, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order for protection shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this chapter that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order for protection granted under this chapter, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner

or respondent temporarily or permanently resides at the time of the alleged violation.

Sec. 15. RCW 26.50.115 and 1992 c 143 s 8 are each amended to read as follows:

(1) When the court issues an ex parte order pursuant to RCW 26.50.070 or an order of protection ordered issued pursuant to RCW 26.50.060, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 26.50.110 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. ~~((If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation.))~~ If the law enforcement officer determines that the respondent did not or probably did not know about the protection order and the officer is provided a current copy of the order, the officer shall serve the order on the respondent if the respondent is present. If the respondent is not present, the officer shall make reasonable efforts to serve a copy of the order on the respondent. If the officer serves the respondent with the petitioner's copy of the order, the officer shall give petitioner a receipt indicating that petitioner's copy has been served on the respondent.

(3) Presentation of an unexpired, certified copy of a protection order is sufficient for a law enforcement officer to enforce the terms of the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system.

NEW SECTION. **Sec. 16.** A new section is added to chapter 26.50 RCW to read as follows:

(1) In circumstances justifying service by publication under RCW 26.50.085(1), if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication and that the serving party is unable to afford the cost of service by publication, the court may order that service be made by mail. Such service shall be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the order and other process to the party to be served at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) Proof of service under this section shall be consistent with court rules for civil proceedings.

(3) Service under this section may be used in the same manner and shall have the same jurisdictional effect as service by publication for purposes of this chapter. Service shall be deemed complete upon the mailing of two copies as prescribed in this section.

Sec. 17. RCW 26.50.125 and 1992 c 143 s 9 are each amended to read as follows:

The court may permit service by publication or by mail under this chapter only if the petitioner pays the cost of publication or mailing unless the county legislative authority allocates funds for service of process by publication or by mail for indigent petitioners (~~who are granted leave to proceed in forma pauperis~~).

NEW SECTION. **Sec. 18.** A new section is added to chapter 26.50 RCW to read as follows:

To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal, and superior court by July 1, 1997, and shall include a database containing the following information:

(1) The names of the parties and the cause number for every order of protection issued under this title, every criminal no-contact order issued under chapter 10.99 RCW, every antiharassment order issued under chapter 10.14 RCW, every dissolution action under chapter 26.09 RCW, every third-party custody action under chapter 26.10 RCW, and every parentage action under chapter 26.10 RCW;

(2) A criminal history of the parties; and

(3) Other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee.

NEW SECTION. **Sec. 19.** A new section is added to chapter 26.50 RCW to read as follows:

(1) Before granting an order under this chapter directing residential placement of a child or restraining or limiting a party's contact with a child, the court shall consult the judicial information system, if available, to determine the pendency of other proceedings involving the residential placement of any child of the parties for whom residential placement has been requested.

(2) Jurisdictional issues regarding out-of-state proceedings involving the custody or residential placement of any child of the parties shall be governed by the uniform child custody jurisdiction act, chapter 26.27 RCW.

Sec. 20. RCW 10.31.100 and 1993 c 209 s 1 and 1993 c 128 s 5 are each reenacted and 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 (10) 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, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 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, workplace, school, or day care 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))~~ sixteen 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))~~ a family or household member as defined in RCW 10.99.020 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)~~) 88.12.025 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 RCW 9A.50.020 may arrest such person.

(10) 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).

(11) 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.

(12) 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. 21. RCW 10.99.020 and 1994 c 121 s 4 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, ~~((and))~~ adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a respondent sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(2) "Dating relationship" has the same meaning as in RCW 26.50.010.

(3) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

- (a) Assault in the first degree (RCW 9A.36.011);
- (b) Assault in the second degree (RCW 9A.36.021);
- (c) Assault in the third degree (RCW 9A.36.031);
- (d) Assault in the fourth degree (RCW 9A.36.041);
- (e) Reckless endangerment in the first degree (RCW 9A.36.045);
- (f) Reckless endangerment in the second degree (RCW 9A.36.050);
- (g) Coercion (RCW 9A.36.070);
- (h) Burglary in the first degree (RCW 9A.52.020);
- (i) Burglary in the second degree (RCW 9A.52.030);
- (j) Criminal trespass in the first degree (RCW 9A.52.070);
- (k) Criminal trespass in the second degree (RCW 9A.52.080);
- (l) Malicious mischief in the first degree (RCW 9A.48.070);
- (m) Malicious mischief in the second degree (RCW 9A.48.080);
- (n) Malicious mischief in the third degree (RCW 9A.48.090);
- (o) Kidnapping in the first degree (RCW 9A.40.020);
- (p) Kidnapping in the second degree (RCW 9A.40.030);
- (q) Unlawful imprisonment (RCW 9A.40.040);
- (r) Violation of the provisions of a restraining order restraining the person or excluding the person from a residence (RCW 26.09.300);
- (s) Violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, ~~((or))~~ 26.50.130, or 10.99.040);
- (t) Rape in the first degree (RCW 9A.44.040);
- (u) Rape in the second degree (RCW 9A.44.050); ~~((and))~~
- (v) Residential burglary (RCW 9A.52.025); and
- (w) Stalking (RCW 9A.46.110).

~~((3))~~ (4) "Victim" means a family or household member who has been subjected to domestic violence.

Sec. 22. RCW 10.99.030 and 1993 c 350 s 3 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 criminal justice training commission shall implement by January 1, 1997, a course of instruction for the training of law enforcement officers in Washington in the handling of domestic violence complaints. The basic law enforcement curriculum of the criminal justice training commission shall include at least twenty hours of basic training instruction on the law enforcement response to domestic violence. The course of instruction, the learning and performance objectives, and the standards for the training shall be developed by the commission and focus on enforcing the criminal laws safety of the victim and holding the perpetrator accountable for the violence. The curriculum shall include training on the extent and prevalence of domestic violence, the importance of criminal justice intervention, techniques for responding to incidents that minimize the likelihood of officer injury and that promote victim safety, investigation and interviewing skills, evidence gathering and report writing, assistance to and services for victims and children, verification and enforcement of court orders, liability, and any additional provisions that are necessary to carry out the intention of this subsection.

(3) The criminal justice training commission shall develop and update annually an in-service training program to familiarize law enforcement officers with the domestic violence laws. The program shall include techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of all parties. The commission shall make the training program available to all law enforcement agencies in the state.

(4) Development of the training in subsections (2) and (3) of this section shall be conducted in conjunction with agencies having a primary responsibility for serving victims of domestic violence with emergency shelter and other services, and representatives to the state-wide organization providing training and education to these organizations and to the general public.

~~((2))~~ (5) 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))~~ (6)(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))~~ (7) 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))~~ (include appropriate phone number). The battered women's shelter and other resources in your area are (include local information)"

~~((5))~~ (8) 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))~~ (9) 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))~~ (10) 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))~~ (11) Records kept pursuant to subsections ~~((3) and (7))~~ (6) and (10) of this section shall be made identifiable by means of a departmental code for domestic violence.

~~((9))~~ (12) 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;

(h) 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.

Sec. 23. RCW 10.99.040 and 1994 sp.s. c 7 s 449 are each amended to read as follows:

(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim. In issuing the order, the court shall consider the provisions of RCW 9A.41.800. The no-contact order shall also be issued in writing as soon as possible.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2) or (3) of this section is a gross misdemeanor. Upon conviction and in addition to other penalties provided by law, the court may require that the defendant submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The court also may include a requirement that the defendant pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(b) Any assault that is a violation of an order issued under this section and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony punishable under chapter 9A.20 RCW, and any conduct in violation of a protective order issued under this section that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony punishable under chapter 9A.20 RCW.

(c) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order." A certified copy of the order shall be provided to the victim. If a no-contact order has been issued prior to charging, that order shall expire at

arraignment or within seventy-two hours if charges are not filed. Such orders need not be entered into the computer-based criminal intelligence information system in this state which is used by law enforcement agencies to list outstanding warrants.

(5) Whenever an order prohibiting contact is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall forthwith enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.

NEW SECTION. Sec. 24. (1) By January 1, 1997, the criminal justice training commission shall develop an educational manual and a training curriculum for prosecutors in Washington state regarding domestic violence. The manual and curriculum shall include but not be limited to: The nature, extent, and causes of domestic violence; laws on domestic violence; practices designed to promote safety of the victim and other family and household members, including safety plans; the responsibility and authority of the criminal justice system to intervene in domestic violence; considerations that should go into screening and charging decisions; violations of court orders; trial tactics; evidence collection; victim advocates; considerations that should go into effective sentencing dispositions related to victim safety and perpetrator accountability; lethality; and community resources for victims, perpetrators, and children.

(2) By July 1, 1998, the commission shall distribute a copy of the manual and curriculum specified in subsection (1) of this section to the prosecuting attorney for each county and unit of government for their use in education and training.

(3) The manual and curriculum specified in subsection (1) of this section shall be developed in conjunction with agencies responsible for prosecuting domestic violence cases, agencies having a primary responsibility for serving victims of domestic violence with emergency shelter and other services, representatives of the state-wide organization providing training and education to these organizations and the general public, and others with a demonstrated expertise on domestic violence and the criminal justice system.

**Sec. 25. RCW 26.09.050 and 1994 sp.s. c 7 s 451 are each amended to read as follows:*

(1) In entering a decree of dissolution of marriage, legal separation, or declaration of invalidity, the court shall determine the marital status of the parties, make provision for a parenting plan for any minor child of the marriage, make provision for the support of any child of the marriage entitled

to support, consider or approve provision for the maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders including the provisions contained in RCW 9.41.800, make provision for the issuance within this action of the restraint provisions of a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW, and make provision for the change of name of any party.

(2) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.09 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(3) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

*Sec. 25 was vetoed. See message at end of chapter.

Sec. 26. RCW 26.09.060 and 1994 sp.s. c 7 s 452 are each amended to read as follows:

(1) In a proceeding for:

(a) Dissolution of marriage, legal separation, or a declaration of invalidity;

or

(b) Disposition of property or liabilities, maintenance, or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse; either party may move for temporary maintenance or for temporary support of children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from:

(a) Transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained or enjoined, requiring him or her to notify

the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) Molesting or disturbing the peace of the other party or of any child;

(c) ~~((Entering the family home or the home))~~ Going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child upon a showing of the necessity therefor;

(d) Removing a child from the jurisdiction of the court.

(3) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

(4) In issuing the order, the court shall consider the provisions of RCW 9.41.800.

~~((4))~~ (5) The court may issue a temporary restraining order without requiring notice to the other party 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.

~~((5))~~ (6) The court may issue a temporary restraining order or preliminary injunction and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances. The court may in its discretion waive the filing of the bond or the posting of security.

~~((6))~~ (7) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from ~~((entering a party's home))~~ going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.09 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

~~((7))~~ (8) The court ~~((may))~~ shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order ~~((for one year))~~ into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

~~((9))~~ (9) A temporary order, 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;

(b) May be revoked or modified;

(c) Terminates when the final decree is entered, except as provided under subsection ~~((9))~~ (10) of this section, or when the petition for dissolution, legal separation, or declaration of invalidity is dismissed;

(d) May be entered in a proceeding for the modification of an existing decree.

~~((9))~~ (10) Delinquent support payments accrued under an order for temporary support remain collectible and are not extinguished when a final decree is entered unless the decree contains specific language to the contrary. A support debt under a temporary order owed to the state for public assistance expenditures shall not be extinguished by the final decree if:

(a) The obligor was given notice of the state's interest under chapter 74.20A RCW; or

(b) The temporary order directs the obligor to make support payments to the office of support enforcement or the Washington state support registry.

Sec. 27. RCW 26.09.300 and 1984 c 263 s 28 are each amended to read as follows:

(1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision excluding the person from the residence, workplace, school, or daycare of another is a misdemeanor.

(2) A person is deemed to have notice of a restraining order if:

(a) The person to be restrained or the person's attorney signed the order;

(b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;

(c) The order was served upon the person to be restrained; or

(d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace 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) A restraining order has been issued under this chapter;

(b) The respondent or person to be restrained knows of the order; and

(c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from the residence.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice.

**Sec. 28. RCW 26.10.040 and 1994 sp.s. c 7 s 453 are each amended to read as follows:*

In entering an order under this chapter, the court shall consider, approve, or make provision for:

(1) Child custody, visitation, and the support of any child entitled to support;

(2) The allocation of the children as a federal tax exemption; ((and))

(3) Any necessary continuing restraining orders, including the provisions contained in RCW 9.41.800;

(4) A domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080;

(5) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.10 RCW AND WILL SUBJECT A VIOLATOR TO ARREST;

(6) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

**Sec. 28 was vetoed. See message at end of chapter.*

Sec. 29. RCW 26.10.115 and 1994 sp.s. c 7 s 454 are each amended to read as follows:

(1) In a proceeding under this chapter either party may file a motion for temporary support of children entitled to support. The motion shall be

accompanied by an affidavit setting forth the factual basis for the motion and the amount requested.

(2) In a proceeding under this chapter either party may file a motion for a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from:

- (a) Molesting or disturbing the peace of the other party or of any child;
- (b) Entering the family home or the home of the other party upon a showing of the necessity therefor;
- (c) Removing a child from the jurisdiction of the court.

(3) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

(4) In issuing the order, the court shall consider the provisions of RCW 9.41.800.

~~((4))~~ (5) The court may issue a temporary restraining order without requiring notice to the other party 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.

~~((5))~~ (6) The court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances.

~~((6))~~ (7) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from ~~((entering a party's home))~~ going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.10 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

~~((7))~~ (8) The court ~~((may))~~ shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order ~~((for one year))~~ into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement

agencies of the existence of the order. The order is fully enforceable in any county in the state.

~~((8))~~ (9) A temporary order, 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;

(b) May be revoked or modified;

(c) Terminates when the final order is entered or when the motion is dismissed;

(d) May be entered in a proceeding for the modification of an existing order.

~~((9))~~ (10) A support debt owed to the state for public assistance expenditures which has been charged against a party pursuant to RCW 74.20A.040 and/or 74.20A.055 shall not be merged in, or otherwise extinguished by, the final decree or order, unless the office of support enforcement has been given notice of the final proceeding and an opportunity to present its claim for the support debt to the court and has failed to file an affidavit as provided in this subsection. Notice of the proceeding shall be served upon the office of support enforcement personally, or by certified mail, and shall be given no fewer than thirty days prior to the date of the final proceeding. An original copy of the notice shall be filed with the court either before service or within a reasonable time thereafter. The office of support enforcement may present its claim, and thereby preserve the support debt, by filing an affidavit setting forth the amount of the debt with the court, and by mailing a copy of the affidavit to the parties or their attorney prior to the date of the final proceeding.

Sec. 30. RCW 26.10.220 and 1987 c 460 s 50 are each amended to read as follows:

(1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision excluding the person from the residence, workplace, school, or daycare of another is a misdemeanor.

(2) A person is deemed to have notice of a restraining order if:

(a) The person to be restrained or the person's attorney signed the order;

(b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;

(c) The order was served upon the person to be restrained; or

(d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace 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) A restraining order has been issued under this chapter;
- (b) The respondent or person to be restrained knows of the order; and
- (c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from the residence.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice.

Sec. 31. RCW 26.26.130 and 1994 sp.s. c 7 s 455 are each amended to read as follows:

(1) The judgment and order of the court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(2) If the judgment and order of the court is at variance with the child's birth certificate, the court shall order that an amended birth certificate be issued.

(3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the court, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. The judgment and order may include a continuing restraining order or injunction. In issuing the order, the court shall consider the provisions of RCW 9.4I.800.

(4) Support judgment and orders shall be for periodic payments which may vary in amount. The court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the court deems just. The court shall not limit or affect in any manner the right of nonparties including the state of Washington to seek reimbursement for support and other services previously furnished to the child.

(5) After considering all relevant factors, the court shall order either or both parents to pay an amount determined pursuant to the schedule and standards contained in chapter 26.19 RCW.

(6) On the same basis as provided in chapter 26.09 RCW, the court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party.

(7) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by

the department of social and health services or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the natural parent or parents, the court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

(8) In entering an order under this chapter, the court may issue any necessary continuing restraining orders, including the restraint provisions of domestic violence protection orders under chapter 26.50 RCW or antiharassment protection orders under chapter 10.14 RCW.

(9) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.26 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(10) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

Sec. 32. RCW 26.26.137 and 1994 sp.s. c 7 s 456 are each amended to read as follows:

(1) If the court has made a finding as to the paternity of a child, or if a party's acknowledgment of paternity has been filed with the court, or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of entry of the final order. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) Any party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any party from:

(a) Molesting or disturbing the peace of another party;

(b) ~~((Entering the home))~~ Going onto the grounds of or entering the home, workplace, or school of another party or the day care or school of any child; or

(c) Removing a child from the jurisdiction of the court.

(3) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in

RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

(4) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.26 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(5) The court shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(6) The court may issue a temporary restraining order without requiring notice to the other party 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.

~~((4))~~ (7) The court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

~~((5))~~ (8) A temporary order, 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;

(b) May be revoked or modified;

(c) Terminates when the final order is entered or when the petition is dismissed; and

(d) May be entered in a proceeding for the modification of an existing order.

~~((6))~~ (9) A support debt owed to the state for public assistance expenditures which has been charged against a party pursuant to RCW 74.20A.040 and/or 74.20A.055 shall not be merged in, or otherwise extinguished by, the final decree or order, unless the office of support enforcement has been given notice of the final proceeding and an opportunity to present its claim for the support debt to the court and has failed to file an affidavit as provided in this subsection.

Notice of the proceeding shall be served upon the office of support enforcement personally, or by certified mail, and shall be given no fewer than thirty days prior to the date of the final proceeding. An original copy of the notice shall be filed with the court either before service or within a reasonable time thereafter. The office of support enforcement may present its claim, and thereby preserve the support debt, by filing an affidavit setting forth the amount of the debt with the court, and by mailing a copy of the affidavit to the parties or their attorney prior to the date of the final proceeding.

NEW SECTION. Sec. 33. A new section is added to chapter 26.26 RCW to read as follows:

(1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision excluding the person from the residence, workplace, school, or daycare of another is a misdemeanor.

(2) A person is deemed to have notice of a restraining order if:

(a) The person to be restrained or the person's attorney signed the order;

(b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;

(c) The order was served upon the person to be restrained; or

(d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace 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) A restraining order has been issued under this chapter;

(b) The respondent or person to be restrained knows of the order; and

(c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from the residence.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice.

Sec. 34. RCW 4.24.130 and 1992 c 30 s 1 are each amended to read as follows:

(1) Any person desiring a change of his or her name or that of his or her child or ward, may apply therefor to the district court of the judicial district in which he or she resides, by petition setting forth the reasons for such change; thereupon such court in its discretion may order a change of the name and thenceforth the new name shall be in place of the former.

The district court shall collect the fees authorized by RCW 36.18.010 for filing and recording a name change order, and transmit the fee and the order to the county auditor. The court may collect a reasonable fee to cover the cost of transmitting the order to the county auditor.

(2) Name change petitions may be filed and shall be heard in superior court when the person desiring a change of his or her name or that of his or her child or ward is a victim of domestic violence as defined in RCW 26.50.010(1) and the person seeks to have the name change file sealed due to reasonable fear for his or her safety or that of his or her child or ward. Upon granting the name change the superior court shall seal the file if the court finds that the safety of the person seeking the name change or his or her child or ward warrants sealing the file. In all cases filed under this subsection, whether or not the name change petition is granted, there shall be no public access to any court record of the name change filing, proceeding, or order, unless the name change is granted but the file is not sealed.

NEW SECTION. Sec. 35. A new section is added to chapter 10.14 RCW to read as follows:

Any order available under this chapter may be issued in actions under chapter 26.09, 26.10, or 26.26 RCW. An order available under this chapter that is issued under those chapters shall be fully enforceable and shall be enforced pursuant to the provisions of this chapter.

Sec. 36. RCW 10.14.080 and 1994 sp.s. c 7 s 448 are each amended to read as follows:

(1) Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted.

(2) An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 10.14.085. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication is permitted. Except as provided in RCW 10.14.070 and 10.14.085, the respondent shall be personally served with

a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(3) At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

(4) An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a permanent antiharassment protection order. The court shall not enter an order that is effective for more than one year if the order restrains the respondent from contacting the respondent's minor children. This limitation is not applicable to civil antiharassment protection orders issued under chapter 26.09, 26.10, or 26.26 RCW. If the petitioner seeks relief for a period longer than one year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to chapter 26.09 or 26.10 RCW.

(5) At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in subsection (4) of this section.

(6) The court, in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

(a) Restraining the respondent from making any attempts to contact the petitioner;

(b) Restraining the respondent from making any attempts to keep the petitioner under surveillance;

(c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace; and

(d) Considering the provisions of RCW 9.41.800.

(7) A petitioner may not obtain an ex parte temporary antiharassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil antiharassment protection order unless good cause for such failure can be shown.

(8) The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section.

Sec. 37. RCW 36.18.010 and 1991 c 26 s 2 are each amended to read as follows:

County auditors or recording officers shall collect the following fees for their official services:

For recording instruments, for the first page, legal size (eight and one-half by fourteen inches or less), five dollars; for each additional legal size page, one dollar; the fee for recording multiple transactions contained in one instrument will be calculated individually for each transaction requiring separate indexing as required under RCW 65.04.050;

For preparing and certifying copies, for the first legal size page, three dollars; for each additional legal size page, one dollar;

For preparing noncertified copies, for each legal size page, one dollar;

For administering an oath or taking an affidavit, with or without seal, two dollars;

For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five-dollar fee for use and support of the prevention of child abuse and neglect activities to be transmitted monthly to the state treasurer and deposited in the state general fund(~~(, which five dollar fee shall expire June 30, 1995,))~~ plus an additional ten-dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

For searching records per hour, eight dollars;

For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

For recording of miscellaneous records, not listed above, for first legal size page, five dollars; for each additional legal size page, one dollar;

For modernization and improvement of the recording and indexing system, a surcharge as provided in RCW 36.22.170.

NEW SECTION. Sec. 38. The office of the administrator for the courts shall report to the appropriate standing committees of the legislature at the beginning of the 1996 legislative session on the status of the work required under section 18 of this act.

NEW SECTION. Sec. 39. Section 37 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. 40. 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, 1995.

Passed the House April 13, 1995.

Approved by the Governor May 5, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 5, 1995.

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

"I am returning herewith, without my approval as to sections 25 and 28, Engrossed Substitute Senate Bill No. 5219 entitled:

"AN ACT Relating to domestic violence;"

This bill clarifies and strengthens important provisions of the state's domestic violence law. I strongly support enactment of these provisions to provide improved safety and justice for battered partners.

Sections 25 and 28, however, contain amendments related to restraining orders identical to those already signed into law in sections 2 and 3 of Substitute Senate Bill No. 5835. Vetoing these duplicate sections will avoid unnecessary cross referencing requirements in the Revised Code of Washington.

For this reason, I am vetoing sections 25 and 28 of Engrossed Substitute Senate Bill No. 5219.

With the exception of sections 25 and 28, Engrossed Substitute Senate Bill No. 5219 is approved."

CHAPTER 247

[Senate Bill 5292]

GAS PIPELINE SAFETY VIOLATIONS—CIVIL PENALTIES

AN ACT Relating to civil penalties for violation of gas pipeline safety regulations; amending RCW 80.28.212; and prescribing penalties.

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

Sec. 1. RCW 80.28.212 and 1969 ex.s. c 210 s 3 are each amended to read as follows:

Any gas company which violates any provision of RCW 80.28.210 as now exists or is later amended or of any regulation issued thereunder, shall be subject to a civil penalty to be directly assessed by the commission((-)). The level of

such penalty shall be set by rule by the commission and shall not ((to)) exceed ((one thousand dollars for each violation for each day that the violation persists, but the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations)) the penalties specified in federal pipeline safety laws (49 U.S.C. 60101 et seq.) in effect on the effective date of this act. Any civil penalty may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon and compromised, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the gas company charged in attempting to achieve compliance after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon and compromised, may be recovered in a civil action in the superior court of Thurston county or of some other county in which such violator may do business. In all such actions for recovery the procedure and rules of evidence shall be the same as in ordinary civil actions. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund.

Passed the Senate April 19, 1995.

Passed the House April 5, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 248

[Substitute Senate Bill 5326]

REGISTRATION OF SEX OFFENDERS—REVISIONS

AN ACT Relating to registration of sex offenders; amending RCW 9A.44.130 and 9A.44.140; and adding a new section to chapter 9A.44 RCW.

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

Sec. 1. RCW 9A.44.130 and 1994 c 84 s 2 are each amended to read as follows:

(1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense, shall register with the county sheriff for the county of the person's residence.

(2) The person shall provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; and (h) social security number.

(3)(a) Sex offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses:

(i) **SEX OFFENDERS IN CUSTODY.** Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(ii) **SEX OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders, who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **SEX OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990 must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. Sex offenders who, on July 23, 1995 are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before on or after February 28, 1990, must register within ten days of July 23, 1995. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(iii) as of July 23, 1995, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

~~((+))~~ (v) **SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders who move to Washington state from another state or a foreign country that are not under the

jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990. Sex offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) SEX OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released prior to July 23, 1995, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify offenders who were released prior to July 23, 1995. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (7) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within ten days of ~~((establishing the new residence))~~ moving. If any person required to register pursuant to this section moves to a new county, the person must register with the county sheriff in the new county within ten days of ~~((establishing the new residence))~~ moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. If any person required to register pursuant to this section moves out of Washington state, the person must also send written notice within ten days of moving to the new state or a foreign country to the county sheriff with whom the person last registered in Washington state.

(5) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex offense by RCW 9.94A.030.

(7) A person who knowingly fails to register or who moves without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor.

Sec. 2. RCW 9A.44.140 and 1991 c 274 s 3 are each amended to read as follows:

(1) The duty to register under RCW 9A.44.130 shall end:

(a) For a person convicted of a class A felony: Such person may only be relieved of the duty to register under subsection ~~((2))~~ (3) or ~~((3))~~ (4) of this section.

(b) For a person convicted of a class B felony: Fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of any new offenses.

(c) For a person convicted of a class C felony: Ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses.

(2) The provisions of subsection (1) of this section shall apply equally to a person who has been found not guilty by reason of insanity under chapter 10.77 RCW of a sex offense.

~~((2))~~ (3) Any person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. Except as provided in subsection ~~((3))~~ (4) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

~~((3))~~ (4) An offender having a duty to register under RCW 9A.44.130 for a sex offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after adjudication, and may consider other factors. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was fifteen years of age or older only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was under the age of fifteen if the petitioner (a) has not been adjudicated of any additional sex offenses during the twenty-four months following the adjudication for the sex offense giving rise to the duty to register, and (b) the petitioner proves by a preponderance of the evidence that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

~~((4))~~ (5) Unless relieved of the duty to register pursuant to this section, a violation of RCW 9A.44.130 is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

~~((5))~~ (6) Nothing in RCW 9.94A.220 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to RCW 9A.44.130.

NEW SECTION. Sec. 3. A new section is added to chapter 9A.44 RCW to read as follows:

When a sex offender registers with the county sheriff pursuant to RCW 9A.44.130, the county sheriff shall make reasonable attempts to verify that the

sex offender is residing at the registered address. Reasonable attempts at verifying an address shall include at a minimum sending certified mail, with return receipt requested, to the sex offender at the registered address, and if the return receipt is not signed by the sex offender, talking in person with the residents living at the address. The sheriff shall make reasonable attempts to locate any sex offender who cannot be located at the registered address.

Passed the Senate April 19, 1995.
 Passed the House April 11, 1995.
 Approved by the Governor May 5, 1995.
 Filed in Office of Secretary of State May 5, 1995.

CHAPTER 249

[Substitute Senate Bill 5406]

MARKET INTEREST RATES—CONSUMER CREDIT TRANSACTIONS

AN ACT Relating to continuing market interest rates for consumer credit transactions; adding a new section to chapter 63.14 RCW; creating new sections; repealing RCW 63.14.135; repealing 1992 c 193 s 4 (uncodified); 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) 1992 c 193 s 4 (uncodified); and
- (2) RCW 63.14.135 and 1992 c 193 s 2, 1989 c 112 s 2, 1988 c 72 s 1, & 1986 c 60 s 2.

NEW SECTION. Sec. 2. This act applies prospectively only and not retroactively. It applies only to retail installment transactions entered into on or after the effective date of this act.

NEW SECTION. Sec. 3. The repeals in section 1 of this act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted pursuant to those statutes; nor as affecting any proceeding instituted under them.

NEW SECTION. Sec. 4. A new section is added to chapter 63.14 RCW to read as follows:

(1) With respect to a retail installment transaction, as defined in RCW 63.14.010(8), if the court as a matter of law finds the agreement or contract, or any clause in the agreement or contract, to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or contract, may enforce the remainder of the agreement or contract, or may limit the application of any unconscionable clause to avoid an unconscionable result.

(2) If it is claimed or it appears to the court that the agreement or contract, or any clause in the agreement or contract, may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting,

purpose, and effect to assist the court in making a determination regarding unconscionability.

(3) For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable.

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 Senate April 19, 1995.

Passed the House April 4, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 250

[Substitute Senate Bill 5421]

BACKGROUND CHECKS—REVISIONS

AN ACT Relating to background checks; and amending RCW 43.43.830 and 43.43.832.

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

Sec. 1. RCW 43.43.830 and 1994 c 108 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults; or

(c) Any prospective adoptive parent, as defined in RCW 26.33.020.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.040 or

in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; first or second degree rape of a child; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(7) "Disciplinary board final decision" means any final decision issued by ~~((the disciplinary board))~~ a disciplining authority under chapter 18.130 RCW or the ~~((director of the department of licensing))~~ secretary of the department of health for the following businesses or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;
- (g) Osteopathy;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing; and
- (l) Psychology(~~†and~~
- ~~(m) Real estate brokers and salesmen~~)).

"Disciplinary board final decision", for real estate brokers and salespersons, means any final decision issued by the director of the department of licensing for real estate brokers and salespersons.

(8) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(9) "Vulnerable adult" means ~~((a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself or a patient in a state hospital as defined in chapter 72.23 RCW))~~ "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(10) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults.

Sec. 2. RCW 43.43.832 and 1993 c 281 s 51 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. The legislature further finds that many developmentally disabled individuals and vulnerable adults desire to hire their own employees directly and also 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, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian, 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 Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

Passed the Senate April 19, 1995.

Passed the House April 6, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 251

[Substitute Senate Bill 5443]

PROPERTY TAX—PUBLIC HEARINGS FOR COLLECTION OF AUTHORIZED TAXES

AN ACT Relating to public hearings for collection of authorized taxes; and adding a new section to chapter 84.55 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 84.55 RCW to read as follows:

A taxing district, other than the state, that collects regular levies shall hold a public hearing on revenue sources for the district's following year's current expense budget. The hearing must include consideration of possible increases in property tax revenues and shall be held prior to the time the taxing district levies the taxes or makes the request to have the taxes levied. The county legislative authority, or the taxing district's governing body if the district is a city, town, or other type of district, shall hold the hearing. For purposes of this section, "current expense budget" means that budget which is primarily funded by taxes and charges and reflects the provision of ongoing services. It does not mean the capital, enterprise, or special assessment budgets of cities, towns, counties, or special purpose districts.

If the taxing district is otherwise required to hold a public hearing on its proposed regular tax levy, a single public hearing may be held on this matter.

Passed the Senate April 19, 1995.

Passed the House April 7, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 252

[Engrossed Substitute Senate Bill 5592]

COASTAL CRAB FISHING LICENSES

AN ACT Relating to coastal crab fishing licenses; and amending RCW 75.30.350.

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

Sec. 1. RCW 75.30.350 and 1994 c 260 s 2 are each amended to read as follows:

(1) Effective January 1, 1995, it is unlawful to fish for coastal crab in Washington state waters without a Dungeness crab—coastal or a Dungeness crab—coastal class B fishery license. Gear used must consist of one buoy attached to each crab pot. Each crab pot must be fished individually.

(2) A Dungeness crab—coastal fishery license is transferable. Except as provided in subsection (3) of this section, such a license shall only be issued to a person who proved active historical participation in the coastal crab fishery by having designated, after December 31, 1993, a vessel or a replacement vessel on the qualifying license that singly or in combination meets the following criteria:

(a) Made a minimum of eight coastal crab landings totaling a minimum of five thousand pounds per season in at least two of the four qualifying seasons identified in subsection ~~((4))~~ (5) of this section, as documented by valid Washington state shellfish receiving tickets; and showed historical and continuous participation in the coastal crab fishery by having held one of the following licenses or their equivalents each calendar year beginning 1990 through

1993, and was designated on the qualifying license of the person who held one of the following licenses in 1994:

- (i) Crab pot—Non-Puget Sound license, issued under RCW 75.28.130(1)(b);
- (ii) Nonsalmon delivery license, issued under RCW 75.28.125;
- (iii) Salmon troll license, issued under RCW 75.28.110;
- (iv) Salmon delivery license, issued under RCW 75.28.113;
- (v) Food fish trawl license, issued under RCW 75.28.120; or
- (vi) Shrimp trawl license, issued under RCW 75.28.130; or

(b) Made a minimum of four Washington landings of coastal crab totaling two thousand pounds during the period from December 1, 1991, to March 20, 1992, and made a minimum of eight crab landings totaling a minimum of five thousand pounds of coastal crab during each of the following periods: December 1, 1991, to September 15, 1992; December 1, 1992, to September 15, 1993; and December 1, 1993, to September 15, 1994. For landings made after December 31, 1993, the vessel shall have been designated on the qualifying license of the person making the landings; or

(c) Made any number of coastal crab landings totaling a minimum of twenty thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets, showed historical and continuous participation in the coastal crab fishery by having held one of the qualifying licenses each calendar year beginning 1990 through 1993, and the vessel was designated on the qualifying license of the person who held that license in 1994.

(3) A Dungeness crab-coastal fishery license shall be issued to a person who had a new vessel under construction between December 1, 1988, and September 15, 1992 if the vessel made coastal crab landings totaling a minimum of five thousand pounds by September 15, 1993, and the new vessel was designated on the qualifying license of the person who held that license in 1994. All landings shall be documented by valid Washington state shellfish receiving tickets. License applications under this subsection may be subject to review by the advisory review board in accordance with RCW 75.30.050. For purposes of this subsection, "under construction" means either:

(a)(i) A contract for any part of the work was signed before September 15, 1992; and

(ii) The contract for the vessel under construction was not transferred or otherwise alienated from the contract holder between the date of the contract and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988; or

(h)(i) The keel was laid before September 15, 1992; and

(j) Vessel ownership was not transferred or otherwise alienated from the owner between the time the keel was laid and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988.

(4) A Dungeness crab—coastal class B fishery license is not transferable. Such a license shall be issued to persons who do not meet the qualification criteria for a Dungeness crab—coastal fishery license, if the person has designated on a qualifying license after December 31, 1993, a vessel or replacement vessel that, singly or in combination, made a minimum of four landings totaling a minimum of two thousand pounds of coastal crab, documented by valid Washington state shellfish receiving tickets, during at least one of the four qualifying seasons, and if the person has participated continuously in the coastal crab fishery by having held or by having owned a vessel that held one or more of the licenses listed in subsection (2) of this section in each calendar year subsequent to the qualifying season in which qualifying landings were made through 1994. Dungeness crab—coastal class B fishery licenses cease to exist after December 31, 1999, and the continuing license provisions of RCW 34.05.422(3) are not applicable.

~~((4))~~ (5) The four qualifying seasons for purposes of this section are:

- (a) December 1, 1988, through September 15, 1989;
- (b) December 1, 1989, through September 15, 1990;
- (c) December 1, 1990, through September 15, 1991; and
- (d) December 1, 1991, through September 15, 1992.

~~((5))~~ (6) For purposes of this section and RCW 75.30.420, "coastal crab" means Dungeness crab (cancer magister) taken in all Washington territorial and offshore waters south of the United States-Canada boundary and west of the Bonilla-Tatoosh line (a line from the western end of Cape Flattery to Tatoosh Island lighthouse, then to the buoy adjacent to Duntz Rock, then in a straight line to Bonilla Point of Vancouver island), Grays Harbor, Willapa Bay, and the Columbia river.

(7) For purposes of this section, "replacement vessel" means a vessel used in the coastal crab fishery in 1994, and that replaces a vessel used in the coastal crab fishery during any period from 1988 through 1993, and which vessel's licensing and catch history, together with the licensing and catch history of the vessel it replaces, qualifies a single applicant for a Dungeness crab—coastal or Dungeness crab—coastal class B fishery license. A Dungeness crab—coastal or Dungeness crab—coastal class B fishery license may only be issued to a person who designated a vessel in the 1994 coastal crab fishery and who designated the same vessel in 1995.

Passed the Senate April 19, 1995.

Passed the House April 7, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 253

[Engrossed Senate Bill 5613]

WORKERS' COMPENSATION ORDERS—AUTHORITY TO HOLD IN ABEYANCE

AN ACT Relating to the authority of the department of labor and industries to hold industrial insurance orders in abeyance; and amending RCW 51.52.060 and 51.32.160.

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

Sec. 1. RCW 51.52.060 and 1986 c 200 s 11 are each amended to read as follows:

~~((Any))~~ (1)(a) A worker, beneficiary, employer, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which ~~((such))~~ a copy of ~~((such))~~ the order, decision, or award was communicated to such person, a notice of appeal to the board ~~((+ PROVIDED, That))~~. However, a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which ~~((such))~~ a copy of ~~((such))~~ the order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board.

(b) Failure to file a notice of appeal with both the board and the department shall not be grounds for denying the appeal if the notice of appeal is filed with either the board or the department.

(2) Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties ~~((thereto))~~ to the appeal of the receipt ~~((thereof))~~ of the appeal and shall forward a copy of ~~((said))~~ the notice of appeal to ~~((such))~~ the other interested parties. Within twenty days of the receipt of such notice of the board, the worker or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken ~~((+ PROVIDED, That nothing contained in this section shall be deemed to change, alter or modify the practice or procedure of the department for the payment of awards pending appeal: AND PROVIDED, That failure to file notice of appeal with both the board and the department shall not be ground for denying the appeal if the notice of appeal is filed with either the board or the department: AND PROVIDED, That,))~~.

(3) If within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department ~~((shall))~~ directs the submission of further evidence or the investigation of any further fact, the time for filing ~~((such))~~ the notice of appeal shall not commence to run until ~~((such))~~ the person ~~((shall have))~~ has been advised in writing of the final decision of the department in the matter ~~((+ PROVIDED, FURTHER, That))~~. In the event the department ~~((shall))~~ directs the submission of further evidence or the

investigation of any further fact, as ~~((above))~~ provided in this section, the department shall render a final order, decision, or award within ninety days from the date ~~((such))~~ further submission of evidence or investigation of further fact is ordered which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days~~((: PROVIDED, FURTHER, That))~~.

(4) The department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may:

(a) Modify, reverse, or change any order, decision, or award~~((or may))~~; or

(b)(i) Except as provided in (b)(ii) of this subsection, hold ~~((any such))~~ an order, decision, or award in abeyance for a period of ninety days which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days pending further investigation in light of the allegations of the notice of appeal~~((and))~~; or

(ii) Hold an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

For purposes of this subsection, good cause includes delay that results from conduct of the claimant that is subject to sanction under RCW 51.32.110.

The board shall ~~((thereupon))~~ deny the appeal upon the issuance of an order under (b) (i) or (ii) of this subsection holding an earlier order, decision, or award in abeyance, without prejudice to the appellant's right to appeal from any subsequent determinative order issued by the department.

This subsection (4)(b) does not apply to applications deemed granted under RCW 51.32.160.

(5) An employer shall have the right to appeal an application deemed granted under RCW 51.32.160 on the same basis as any other application adjudicated pursuant to that section.

(6) A provision of this section shall not be deemed to change, alter, or modify the practice or procedure of the department for the payment of awards pending appeal.

Sec. 2. RCW 51.32.160 and 1988 c 161 s 11 are each amended to read as follows:

(1)(a) If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: PROVIDED, That the director may, upon application of the worker made at any time, provide proper and necessary medical and surgical services as authorized under RCW 51.36.010. The department shall promptly mail a copy of the application to the employer at the employer's last known address as shown by the records of the department.

(b) "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, or examination.

(c) Applications for benefits where the claim has been closed without medical recommendation, advice, or examination are not subject to the seven year limitation of this section. The preceding sentence shall not apply to any closing order issued prior to July 1, 1981. First closing orders issued between July 1, 1981, and July 1, 1985, shall, for the purposes of this section only, be deemed issued on July 1, 1985. The time limitation of this section shall be ten years in claims involving loss of vision or function of the eyes.

(d) If an order denying an application to reopen filed on or after July 1, 1988, is not issued within ninety days of receipt of such application by the self-insured employer or the department, such application shall be deemed granted. However, for good cause, the department may extend the time for making the final determination on the application for an additional sixty days.

(2) If a worker receiving a pension for total disability returns to gainful employment for wages, the director may suspend or terminate the rate of compensation established for the disability without producing medical evidence that shows that a diminution of the disability has occurred.

(3) No act done or ordered to be done by the director, or the department prior to the signing and filing in the matter of a written order for such readjustment shall be grounds for such readjustment.

Passed the Senate April 19, 1995.

Passed the House April 13, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 254

[Engrossed Substitute Senate Bill 5629]

MOTOR VEHICLE WARRANTIES—REVISIONS

AN ACT Relating to new motor vehicle warranties; amending RCW 19.118.021, 19.118.031, 19.118.041, 19.118.061, 19.118.080, 19.118.090, 19.118.110, and 46.12.380; adding new sections to chapter 19.118 RCW; and declaring an emergency.

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

Sec. 1. RCW 19.118.021 and 1990 c 239 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) "Board" means new motor vehicle arbitration board.

(2) "Collateral charges" means any sales or lease related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges,

dealer preparation charges, or any other charges for service contracts, undercoating, rustproofing, or factory or dealer installed options.

(3) "Condition" means a general problem that results from a defect or malfunction of one or more parts, or their improper installation by the manufacturer, its agents, or the new motor vehicle dealer.

(4) "Consumer" means any person who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during the duration of the warranty period defined under this section.

(5) "Court" means the superior court in the county where the consumer resides, except if the consumer does not reside in this state, then the superior court in the county where an arbitration hearing or determination was conducted or made pursuant to this chapter.

(6) "Incidental costs" means any reasonable expenses incurred by the consumer in connection with the repair of the new motor vehicle, including any towing charges and the costs of obtaining alternative transportation.

(7) "Manufacturer" means any person engaged in the business of constructing or assembling new motor vehicles or engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers. "Manufacturer" does not include any person engaged in the business of set-up of motorcycles as an agent of a new motor vehicle dealer if the person does not otherwise construct or assemble motorcycles.

(8) "Motorcycle" means any motorcycle as defined in RCW 46.04.330 which has an engine displacement of at least seven hundred fifty cubic centimeters. .

(9) "New motor vehicle" means any new self-propelled vehicle, including a new motorcycle, primarily designed for the transportation of persons or property over the public highways that ~~(, after original retail purchase or lease)~~ was originally purchased or leased at retail from a new motor vehicle dealer or leasing company in this state, and that was initially registered in this state or for which a temporary motor vehicle license was issued pursuant to RCW 46.16.460, but does not include vehicles purchased or leased by a business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement. If the motor vehicle is a motor home, this chapter shall apply to the self-propelled vehicle and chassis, but does not include those portions of the vehicle designated, used, or maintained primarily as a mobile dwelling, office, or commercial space. The term "new motor vehicle" does not include trucks with nineteen thousand pounds or more gross vehicle weight rating. The term "new motor vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

(10) "New motor vehicle dealer" means a person who holds a dealer agreement with a manufacturer for the sale of new motor vehicles, who is engaged in the business of purchasing, selling, servicing, exchanging, or dealing

in new motor vehicles, and who is licensed or required to be licensed as a vehicle dealer by the state of Washington.

(11) "Nonconformity" means a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of a new motor vehicle, but does not include a defect or condition that is the result of abuse, neglect, or unauthorized modification or alteration of the new motor vehicle.

(12) "Purchase price" means the cash price of the new motor vehicle appearing in the sales agreement or contract (~~(, including any allowance for a trade-in vehicle;)~~).

(a) "Purchase price" in the instance of a lease means the ~~((purchase price or value of the vehicle declared to the department of licensing for purposes of tax collection))~~ actual written capitalized cost disclosed to the consumer contained in the lease agreement. If there is no disclosed capitalized cost in the lease agreement the "purchase price" is the manufacturer's suggested retail price including manufacturer installed accessories or items of optional equipment displayed on the manufacturer label, required by 15 U.S.C. Sec. 1232.

(b) "Purchase price" in the instance of both a vehicle purchase or lease agreement includes any allowance for a trade-in vehicle but does not include any manufacturer-to-consumer rebate appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase or lease cost.

Where the consumer is a ~~((second or))~~ subsequent ~~((purchaser, lessee, or))~~ transferee and the consumer selects repurchase of the motor vehicle, "purchase price" means the consumer's subsequent purchase price ~~((of the second or subsequent purchase or lease))~~. Where the consumer is a ~~((second or))~~ subsequent ~~((purchaser, lessee, or))~~ transferee and the consumer selects replacement of the motor vehicle, "purchase price" means the original purchase price.

(13) "Reasonable offset for use" means the definition provided in RCW 19.118.041(1)(c) for a new motor vehicle other than a new motorcycle. The reasonable offset for use for a new motorcycle shall be computed by the number of miles that the vehicle traveled before the manufacturer's acceptance of the vehicle upon repurchase or replacement multiplied by the purchase price, and divided by twenty-five thousand.

(14) "Reasonable number of attempts" means the definition provided in RCW 19.118.041.

(15) "Replacement motor vehicle" means a new motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options.

(16) "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

(17) "Subsequent transferee" means a consumer who acquires a motor vehicle, within the warranty period, as defined in this section, with an applicable manufacturer's written warranty and where the vehicle otherwise met the definition of a new motor vehicle at the time of original retail sale or lease.

(18) "Substantially impair" means to render the new motor vehicle unreliable, or unsafe for ordinary use, or to diminish the resale value of the new motor vehicle below the average resale value for comparable motor vehicles.

~~((18))~~ (19) "Warranty" means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, and fitness of a new motor vehicle for ordinary use or reasonably intended purposes throughout the duration of the warranty period as defined under this section.

~~((19))~~ (20) "Warranty period" means the period ending two years after the date of the original delivery to the consumer of a new motor vehicle, or the first twenty-four thousand miles of operation, whichever occurs first.

Sec. 2. RCW 19.118.031 and 1987 c 344 s 3 are each amended to read as follows:

(1) ~~((Each new motor vehicle dealer shall provide an owner's manual which shall be published by the manufacturer and include a list of the addresses and phone numbers for its zone or regional offices for this state.))~~ The manufacturer shall publish an owner's manual and provide it to the new motor vehicle dealer or leasing company. The owner's manual shall include a list of the addresses and phone numbers for the manufacturer's customer assistance division or zone or regional offices. A manufacturer shall provide to the new motor vehicle dealer or leasing company all applicable manufacturer's written warranties. The dealer or leasing company shall transfer to the consumer, at the time of original retail sale or lease, the owner's manual and applicable written warranties as provided by a manufacturer.

(2) At the time of purchase, the new motor vehicle dealer shall provide the consumer with a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared and supplied by the attorney general and shall contain a toll-free number that the consumer can contact for information regarding the procedures and remedies under this chapter.

(3) For the purposes of this chapter, if a new motor vehicle does not conform to the warranty and the consumer reports the nonconformity during the term of the warranty period or the period of coverage of the applicable manufacturer's written warranty, whichever is less, to the manufacturer, its agent, or the new motor vehicle dealer who sold the new motor vehicle, the manufacturer, its agent, or the new motor vehicle dealer shall make repairs as are necessary to conform the vehicle to the warranty, regardless of whether such repairs are made after the expiration of the warranty period. Any corrections or attempted repairs undertaken by a new motor vehicle dealer under this chapter

shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner as other work under the manufacturer's written warranty is billed. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(4) Upon request from the consumer, the manufacturer or new motor vehicle dealer shall provide a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding inspection, diagnosis, or test-drive of the consumer's new motor vehicle, or shall provide a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's new motor vehicle as it pertains to any material, feature, component, or the performance thereof.

(5) The new motor vehicle dealer shall provide to the consumer each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the vehicle including but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer.

(6) No manufacturer, its agent, or the new motor vehicle dealer may refuse to diagnose or repair any nonconformity covered by the warranty for the purpose of avoiding liability under this chapter.

(7) For purposes of this chapter, consumers shall have the rights and remedies, including a cause of action, against manufacturers as provided in this chapter.

(8) The warranty period and thirty-day out-of-service period shall be extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster.

Sec. 3. RCW 19.118.041 and 1989 c 347 s 2 are each amended to read as follows:

(1) If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within forty calendar days of a consumer's written request to the manufacturer's corporate, dispute resolution, zone, or regional office address shall, at the option of the consumer, replace or repurchase the new motor vehicle.

(a) The replacement motor vehicle shall be identical or reasonably equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options. Where the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for sales tax, license, ~~((and))~~ registration fees, and refund of any incidental costs. Compensation for a reasonable offset for use shall be paid by

the consumer to the manufacturer in the event that the consumer accepts a replacement motor vehicle.

(b) When repurchasing the new motor vehicle, the manufacturer shall refund to the consumer the purchase price, all collateral charges, and incidental costs, less a reasonable offset for use. When repurchasing the new motor vehicle, in the instance of a lease, the manufacturer shall refund to the consumer all payments made by the consumer under the lease including but not limited to all lease payments, trade-in value or inception payment, security deposit, all collateral charges and incidental costs less a reasonable offset for use. The manufacturer shall make such payment to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle and upon the lessor's and/or lienholder's receipt of that payment and payment by the consumer of any late payment charges, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

(c) The reasonable offset for use shall be computed by multiplying the number of miles that the vehicle traveled directly attributable to use by the consumer times the purchase price, and dividing the product by one hundred twenty thousand. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects repurchase of the motor vehicle, "the number of miles that the vehicle traveled" shall be calculated from the date of purchase or lease by the consumer. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects replacement of the motor vehicle, "the number of miles that the vehicle traveled" shall be calculated from the original purchase, lease, or in-service date.

(2) Reasonable number of attempts shall be deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer to conform the new motor vehicle to the warranty within the warranty period, if: (a) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (b) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (c) the vehicle is out-of-service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(3) No new motor vehicle dealer may be held liable by the manufacturer for any collateral charges, incidental costs, purchase price refunds, or vehicle replacements. Manufacturers shall not have a cause of action against dealers under this chapter. Consumers shall not have a cause of action against dealers

under this chapter, but a violation of any responsibilities imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW. Consumers may pursue rights and remedies against dealers under any other law, including chapters 46.70 and 46.71 RCW. Manufacturers and consumers may not make dealers parties to arbitration board proceedings under this chapter.

Sec. 4. RCW 19.118.061 and 1989 c 347 s 3 are each amended to read as follows:

(1) A manufacturer shall be prohibited from reselling any motor vehicle determined or adjudicated as having a serious safety defect unless the serious safety defect has been corrected and the manufacturer warrants upon the first subsequent resale that the defect has been corrected.

~~(2) ((After the replacement or repurchase of a motor vehicle determined to have a nonconformity or to have been out of service for thirty or more calendar days pursuant to this chapter, the manufacturer shall notify the attorney general and the department of licensing, by certified mail or by personal service, upon receipt of the motor vehicle. If the nonconformity in the motor vehicle is corrected, the manufacturer shall notify the attorney general and the department of licensing of such correction.))~~ Before any sale or transfer of a vehicle that has been replaced or repurchased by the manufacturer that was determined or adjudicated as having a nonconformity or to have been out of service for thirty or more calendar days under this chapter, the manufacturer shall:

(a) Notify the attorney general and the department of licensing, by certified mail or by personal service, upon receipt of the motor vehicle;

(b) Attach a resale disclosure notice to the vehicle in a manner and form to be specified by the attorney general. Only the retail purchaser may remove the resale disclosure notice after execution of the disclosure form required under subsection (3) of this section; and

(c) Notify the attorney general and the department of licensing if the nonconformity in the motor vehicle is corrected.

(3) Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle and which was previously returned after a final determination, adjudication, or settlement under this chapter or under a similar statute of any other state, the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of said final determination, adjudication or settlement, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity in a manner to be specified by the attorney general, and the department of licensing shall place on the certificate of title information indicating the vehicle was returned under this chapter.

(4) Upon receipt of the manufacturer's notification under subsection (2) of this section that the nonconformity has been corrected and upon the manufacturer's request and payment of any fees, the department of licensing shall issue a new title with information indicating the vehicle was returned under this chapter and that the nonconformity has been corrected. Upon the first

subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle ((for which a new title has been issued under this subsection)), as provided under subsection (2)(c) of this section, the manufacturer shall warrant upon the resale that the nonconformity has been corrected, and the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of the corrected nonconformity, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity and indicating that it has been corrected in a manner to be specified by the attorney general.

(5) After repurchase or replacement and following a manufacturer's receipt of a vehicle under this section and prior to a vehicle's first subsequent retail transfer by resale or lease, any intervening transferor of a vehicle subject to the requirements of this section who has received the disclosure, correction and warranty documents, as specified by the attorney general and required under this chapter shall deliver the documents with the vehicle to the next transferor, purchaser or lessee to ensure proper and timely notice and disclosure. Any intervening transferor who fails to comply with this subsection shall, at the option of the subsequent transferor or first subsequent retail purchaser or lessee: (a) Indemnify and subsequent transferor or first subsequent retail purchaser for all damages caused by such violation; or (b) repurchase the vehicle at the full purchase price including all fees, taxes and costs incurred for goods and services which were included in the subsequent transaction.

Sec. 5. RCW 19.118.080 and 1989 c 347 s 4 are each amended to read as follows:

(1) Except as provided in RCW 19.118.160, the attorney general shall contract with one or more private entities to conduct arbitration proceedings in order to settle disputes between consumers and manufacturers as provided in this chapter, and each private entity shall constitute a new motor vehicle arbitration board for purposes of this chapter. The entities shall not be affiliated with any manufacturer or new motor vehicle dealer and shall have available the services of persons with automotive technical expertise to assist in resolving disputes under this chapter. No private entity or its officers or employees conducting board proceedings and no arbitrator presiding at such proceedings shall be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Payment to the entities for the arbitration services shall be made from the new motor vehicle arbitration account.

(2) The attorney general shall adopt rules for the uniform conduct of the arbitrations by the boards whether conducted by a private entity or by the attorney general pursuant to RCW 19.118.160, which rules shall include but not be limited to the following procedures:

(a) At all arbitration proceedings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the dispute, to cross-examine witnesses, and to be represented by counsel.

(b) A dealer, manufacturer, or other persons shall produce records and documents requested by a party which are reasonably related to the dispute. If a dealer, manufacturer, or other person refuses to comply with such a request, a party may present a request to the board for the attorney general to issue a subpoena on behalf of the board.

The subpoena shall be issued only for the production of records and documents which the board has determined are reasonably related to the dispute, including but not limited to documents described in RCW 19.118.031 (4) or (5).

If a party fails to comply with the subpoena, the arbitrator may at the outset of the arbitration hearing impose any of the following sanctions: (i) Find that the matters which were the subject of the subpoena, or any other designated facts, shall be taken to be established for purposes of the hearing in accordance with the claim of the party which requested the subpoena; (ii) refuse to allow the disobedient party to support or oppose the designated claims or defenses, or prohibit that party from introducing designated matters into evidence; (iii) strike claims or defenses, or parts thereof; or (iv) render a decision by default against the disobedient party.

If a nonparty fails to comply with a subpoena and upon an arbitrator finding that without such compliance there is insufficient evidence to render a decision in the dispute, the attorney general shall enforce such subpoena in superior court and the arbitrator shall continue the arbitration hearing until such time as the nonparty complies with the subpoena or the subpoena is quashed.

(c) A party may obtain written affidavits from employees and agents of a dealer, a manufacturer or other party, or from other potential witnesses, and may submit such affidavits for consideration by the board.

(d) Records of the board proceedings shall be open to the public. The hearings shall be open to the public to the extent practicable.

(e) Where the board proceedings are conducted by one or more private entities, a single arbitrator may be designated to preside at such proceedings.

(3) A consumer shall exhaust the new motor vehicle arbitration board remedy or informal dispute resolution settlement procedure under RCW 19.118.150 before filing any superior court action.

(4) The attorney general shall maintain records of each dispute submitted to the new motor vehicle arbitration board, including an index of new motor vehicles by year, make, and model.

(5) The attorney general shall compile aggregate annual statistics for all disputes submitted to, and decided by, the new motor vehicle arbitration board, as well as annual statistics for each manufacturer that include, but shall not be limited to, the number and percent of: (a) Replacement motor vehicle requests; (b) purchase price refund requests; (c) replacement motor vehicles obtained in prehearing settlements; (d) purchase price refunds obtained in prehearing settlements; (e) replacement motor vehicles awarded in arbitration; (f) purchase price refunds awarded in arbitration; (g) board decisions neither complied with during the forty calendar day period nor petitioned for appeal within the thirty

calendar day period; (h) board decisions appealed categorized by consumer or manufacturer; (i) the nature of the court decisions and who the prevailing party was; (j) appeals that were held by the court to be brought without good cause; and (k) appeals that were held by the court to be brought solely for the purpose of harassment. The statistical compilations shall be public information.

(6) The attorney general shall submit biennial reports of the information in this section to the senate and house of representatives committees on commerce and labor, with the first report due January 1, 1990.

(7) The attorney general shall adopt rules to implement this chapter. Such rules shall include uniform standards by which the boards shall make determinations under this chapter, including but not limited to rules which provide:

(a) A board shall find that a nonconformity exists if it determines that the consumer's new motor vehicle has a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of the vehicle.

(b) A board shall find that a reasonable number of attempts to repair a nonconformity have been undertaken if: (i) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (iii) the vehicle is out-of-service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(c) A board shall find that a manufacturer has failed to comply with RCW 19.118.041 if it finds that the manufacturer, its agent, or the new motor vehicle dealer has failed to correct a nonconformity after a reasonable number of attempts and the manufacturer has failed, within forty days of the consumer's written request, to repurchase the vehicle or replace the vehicle with a vehicle identical or reasonably equivalent to the vehicle being replaced.

(8) The attorney general shall provide consumers with information regarding the procedures and remedies under this chapter.

Sec. 6. RCW 19.118.090 and 1989 c 347 s 5 are each amended to read as follows:

(1) A consumer may request arbitration under this chapter by submitting the request to the attorney general. Within ten days after receipt of an arbitration request, the attorney general shall make a reasonable determination of the cause of the request for arbitration and provide necessary information to the consumer regarding the consumer's rights and remedies under this chapter. The attorney general shall assign the dispute to a board, except that if it clearly appears from

the materials submitted by the consumer that the dispute is not eligible for arbitration, the attorney general may refuse to assign the dispute and shall explain any required procedures to the consumer.

(2) Manufacturers shall submit to arbitration if such arbitration is requested by the consumer within thirty months from the date of the original delivery of the new motor vehicle to a consumer at retail and if the consumer's dispute is deemed eligible for arbitration by the board.

(3) The new motor vehicle arbitration board may reject for arbitration any dispute that it determines to be frivolous, fraudulent, filed in bad faith, res judicata or beyond its authority. Any dispute deemed by the board to be ineligible for arbitration due to insufficient evidence may be reconsidered by the board upon the submission of other information or documents regarding the dispute that would allegedly qualify for relief under this chapter. Following a second review, the board may reject the dispute for arbitration if evidence is still clearly insufficient to qualify the dispute for relief under this chapter. A rejection by the board is subject to review by the attorney general or may be appealed under RCW 19.118.100.

A decision to reject any dispute for arbitration shall be sent by certified mail to the consumer and the manufacturer, and shall contain a brief explanation as to the reason therefor.

(4) The manufacturer shall complete a written manufacturer response to the consumer's request for arbitration. The manufacturer shall provide a response to the consumer and the board within ten calendar days from the date of the manufacturer's receipt of the board's notice of acceptance of a dispute for arbitration. The manufacturer response shall include all issues and affirmative defenses related to the nonconformities identified in the consumer's request for arbitration that the manufacturer intends to raise at the arbitration hearing.

(5) The arbitration board shall award the remedies under RCW 19.118.041 if it finds a nonconformity and that a reasonable number of attempts have been undertaken to correct the nonconformity. The board shall award reasonable costs and attorneys' fees incurred by the consumer ((in connection with board proceedings)) where the manufacturer ((is)) has been directly represented by counsel((-); (a) In dealings with the consumer in response to a request to repurchase or replace under RCW 19.118.041; (b) in settlement negotiations; (c) in preparation of the manufacturer's statement; or (d) at an arbitration board hearing or other board proceeding.

~~((5))~~ (6) It is an affirmative defense to any claim under this chapter that: (a) The alleged nonconformity does not substantially impair the use, value, or safety of the new motor vehicle; or (b) the alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle.

~~((6))~~ (7) The board shall have forty-five calendar days from the date the board receives the consumer's request for arbitration to hear the dispute. If the board determines that additional information is necessary, the board may

continue the arbitration proceeding on a subsequent date within ten calendar days of the initial hearing. The board shall decide the dispute within sixty calendar days from the date the board receives the consumer's request for arbitration.

The decision of the board shall be delivered by certified mail or personal service to the consumer and the manufacturer, and shall contain a written finding of whether the new motor vehicle meets the standards set forth under this chapter.

~~((7))~~ (8) The consumer may accept the arbitration board decision or appeal to superior court, pursuant to RCW 19.118.100. Upon acceptance by the consumer, the arbitration board decision shall become final. The consumer shall send written notification of acceptance or rejection to the arbitration board within sixty days of receiving the decision and the arbitration board shall immediately deliver a copy of the consumer's acceptance to the manufacturer by certified mail, return receipt requested, or by personal service. Failure of the consumer to respond to the arbitration board within sixty calendar days of receiving the decision shall be considered a rejection of the decision by the consumer. The consumer shall have one hundred twenty calendar days from the date of rejection to file a petition of appeal in superior court. At the time the petition of appeal is filed, the consumer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general.

~~((8))~~ (9) Upon receipt of the consumer's acceptance, the manufacturer shall have forty calendar days to comply with the arbitration board decision or thirty calendar days to file a petition of appeal in superior court. At the time the petition of appeal is filed, the manufacturer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general. If the attorney general receives no notice of petition of appeal after forty calendar days, the attorney general shall contact the consumer to verify compliance.

~~((9) If, at the end of the forty calendar day period, neither compliance with, nor a petition to appeal the board's decision has occurred, the attorney general may impose a fine of one thousand dollars per day until compliance occurs or a maximum penalty of one hundred thousand dollars accrues unless the manufacturer can provide clear and convincing evidence that any delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the attorney general shall initiate proceedings against the manufacturer for failure to pay any fine that accrues until compliance with the board's decision occurs or the maximum penalty of one hundred thousand dollars results. Where the attorney general prevails in an enforcement action regarding any fine imposed under this subsection, the attorney general shall be entitled to reasonable costs and attorneys' fees. Fines and recovered costs and fees shall be returned to the new motor vehicle arbitration account.))~~

Sec. 7. RCW 19.118.110 and 1989 c 347 s 7 are each amended to read as follows:

A (~~five-dollar~~) three-dollar arbitration fee shall be collected by either the new motor vehicle dealer or vehicle lessor from the consumer upon execution of a retail sale or lease agreement. The fee shall be forwarded to the department of licensing at the time of title application for deposit in the new motor vehicle arbitration account hereby created in the state treasury. Moneys in the account shall be used for the purposes of this chapter, subject to appropriation.

At the end of each fiscal year, the attorney general shall prepare a report listing the annual revenue generated and the expenses incurred in implementing and operating the arbitration program under this chapter.

NEW SECTION. Sec. 8. A new section is added to chapter 19.118 RCW to read as follows:

(1) Compliance with an arbitration board decision under this chapter must be accomplished at a time, place, and in a manner to be determined by the mutual agreement of the consumer and manufacturer.

(a) The consumer shall make the motor vehicle available to the manufacturer free of damage other than that related to any nonconformity, defect, or condition to which a warranty applied, or that can reasonably be expected in the use of the vehicle for ordinary or reasonably intended purposes and in consideration of the mileage attributable to the consumer's use. Any insurance claims or settlement proceeds for repair of damage to the vehicle due to fire, theft, vandalism, or collision must be assigned to the manufacturer or, at the consumer's option, the repair must be completed before return of the vehicle to the manufacturer.

The consumer may not remove any equipment or option that was included in the original purchase or lease of the vehicle or that is otherwise included in the repurchase or replacement award. In removing any equipment not included in the original purchase or lease, the consumer shall exercise reasonable care to avoid further damage to the vehicle but is not required to return the vehicle to original condition.

(b) At the time of compliance with an arbitration board decision that awards repurchase, the manufacturer shall make full payment to the consumers and either the lessor or lienholder, or both, or provide verification to the consumer of prior payment to either the lessor or lienholder, or both.

At the time of compliance with an arbitration board decision that awards replacement, the manufacturer shall provide the replacement vehicle together with any refund of incidental costs.

(c) At any time before compliance a party may request the board to resolve disputes regarding compliance with the arbitration board decision including but not limited to time and place for compliance, condition of the vehicle to be returned, clarification or recalculation of refund amounts under the award, or a determination if an offered vehicle is reasonably equivalent to the vehicle being replaced. In resolving compliance disputes the board may not review, alter, or otherwise change the findings of a decision or extend the time for compliance beyond the time necessary for the board to resolve the dispute.

(d) Failure of the consumer to make the vehicle available within sixty calendar days in response to a manufacturer's unconditional tender of compliance is considered a rejection of the arbitration decision by the consumer, except as provided in (c) of this subsection or subsection (2) of this section.

(2) If, at the end of the forty calendar day period, neither compliance with nor a petition to appeal the board's decision has occurred, the attorney general may impose a fine of up to one thousand dollars per day until compliance occurs or a maximum penalty of one hundred thousand dollars accrues unless the manufacturer can provide clear and convincing evidence that any delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide the evidence or fails to pay the fine, the attorney general may initiate proceedings against the manufacturer for failure to pay any fine that accrues until compliance with the board's decision occurs or the maximum penalty of one hundred thousand dollars results. If the attorney general prevails in an enforcement action regarding any fine imposed under this subsection, the attorney general is entitled to reasonable costs and attorneys' fees. Fines and recovered costs and fees shall be returned to the new motor vehicle arbitration account.

NEW SECTION. Sec. 9. A new section is added to chapter 19.118 RCW to read as follows:

Notwithstanding RCW 46.12.380, the department of licensing shall make available to the registered owner all title history information regarding the vehicle upon request of the registered owner and receipt of a statement that he or she is investigating or pursuing rights under this chapter.

Sec. 10. RCW 46.12.380 and 1990 c 232 s 2 are each amended to read as follows:

(1) Notwithstanding the provisions of chapter 42.17 RCW, the name or address of an individual vehicle owner shall not be released by the department, county auditor, or agency or firm authorized by the department except under the following circumstances:

(a) The requesting party is a business entity that requests the information for use in the course of business;

(b) The request is a written request that is signed by the person requesting disclosure that contains the full legal name and address of the requesting party, that specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party promises that the party will use the information only for the purpose stated in the request for the information; and that the party does not intend to use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information. The term "unsolicited business contact" means a contact that is intended to result in, or promote, the sale of any goods or services to a person

named in the disclosed information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(2) The disclosing entity shall retain the request for disclosure for three years.

(3) Whenever the disclosing entity grants a request for information under this section by an attorney or private investigator, the disclosing entity shall provide notice to the vehicle owner, to whom the information applies, that the request has been granted. The notice also shall contain the name and address of the requesting party.

(4) Any person who is furnished vehicle owner information under this section shall be responsible for assuring that the information furnished is not used for a purpose contrary to the agreement between the person and the department.

(5) This section shall not apply to requests for information by governmental entities or requests that may be granted under any other provision of this title expressly authorizing the disclosure of the names or addresses of vehicle owners.

(6) This section shall not apply to title history information under section 9 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.

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.

Passed the Senate April 19, 1995.

Passed the House April 10, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 255

[Engrossed Second Substitute Senate Bill 5633]

WEED CONTROL

AN ACT Relating to weed control; amending RCW 90.58.030, 17.10.010, and 90.48.020; adding a new section to chapter 90.48 RCW; adding a new section to chapter 75.20 RCW; adding a new chapter to Title 17 RCW; and declaring an emergency.

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

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

(1) *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens* which are collectively called spartina are not native to the state of Washington nor to the west coast of North America. This noxious weed was

inadvertently introduced into the wetlands of the state and is now aggressively invading new areas to the detriment of native ecosystems and aquatic habitat. The spread of spartina threatens to permanently convert and displace native freshwater and saltwater wetlands and intertidal zones, including critical habitat for migratory birds, many fish species, bivalves, invertebrates, marine mammals, and other animals. The continued spread of spartina will permanently reduce the diversity and the quantity of these species and will have a significant negative environmental impact.

Spartina poses a significant hydrological threat. Clumps and meadows of spartina are dense environments that bind sediments and lift the intertidal gradient up out of the intertidal zone through time. This process reduces flows during flood conditions, raises flood levels, and significantly alters the hydrological regime of estuarine areas.

Spartina spreads by rhizomes and seed production. Through lateral growth by rhizomes, spartina establishes a dense monotypic meadow. Through seed production and the spread of seed through the air and by water, spartina is currently being spread to other states and to Canadian provinces.

(2) Purple loosestrife was first documented in the state in 1929 along freshwater shorelands. It is now present throughout the state and is particularly abundant in Grant county and its neighboring counties. The plant appears to be colonizing more rapidly on the eastern side of the state than on the western side. It was first introduced to the Winchester Wasteway area in the 1960's and has invaded the area rapidly. Purple loosestrife is displacing native plants and as a result is threatening an extremely important part of this state's wildlife habitat. *Lythrum salicaria* and *L. virgatum* are closely related loosestrife species that are morphologically similar and not easily distinguished from each other in the field. Both species have been referred to as purple loosestrife.

(3) Current laws and rules designed to protect the environment and preserve the wetland habitats, fish, and wildlife of the state are not designed to respond to an ecosystem-wide threat of this kind. State and federal agencies, local governments, weed boards, concerned individuals, and property owners attempting to deal with the ecological emergency posed by spartina and purple loosestrife infestations have been frustrated by interagency disagreements, demands for an undue amount of procedural and scientific process and information, dilatory appeals, and the improper application of laws and regulations by agencies that have in fact undermined the legislative purposes of those same laws while ignoring the long-term implications of delay and inaction. There is a compelling need for strong leadership, coordination, and reporting by a single state agency to respond appropriately to this urgent environmental challenge.

Any further delay of control efforts will significantly increase the cost of spartina and purple loosestrife control and reduce the likelihood of long-term success. Control efforts must be coordinated across political and ownership boundaries in order to be effective.

(4) The presence of noxious weeds on public lands constitutes a public nuisance and negatively impacts public and private lands. The legislature finds that control and eradication of noxious weeds on private lands is in the public interest.

NEW SECTION. Sec. 2. This state is facing an environmental disaster that will affect other states as well as other nations. The legislature finds that six years is sufficient time for state agencies to debate solutions to the spartina and purple loosestrife problems that are occurring in state waters. One of the purposes of this act is to focus agency action on control and future eradication of spartina and purple loosestrife. It is the mandate of the legislature that one state agency, the department of agriculture, be responsible for a unified effort to eliminate spartina and control purple loosestrife, with the advice of the state noxious weed control board, and that state agency shall be directly accountable to the legislature on the progress of the spartina eradication and purple loosestrife control program.

NEW SECTION. Sec. 3. A new section is added to chapter 90.48 RCW to read as follows:

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act; and applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to the effective date of this section, by the department of agriculture, or by the department of agriculture jointly with other state agencies. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before the effective date of this section.

(2) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds, is unaffected by this section.

(3) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

NEW SECTION. Sec. 4. A new section is added to chapter 75.20 RCW to read as follows:

(1) An activity conducted solely for the removal or control of spartina shall not require hydraulic project approval.

(2) An activity conducted solely for the removal or control of purple loosestrife and which is performed with hand-held tools, hand-held equipment, or equipment carried by a person when used shall not require hydraulic project approval.

(3) By June 30, 1997, the department of fish and wildlife shall develop rules for projects conducted solely for the removal or control of various aquatic noxious weeds other than spartina and purple loosestrife and for activities or projects for controlling purple loosestrife not covered by subsection (2) of this section, which projects will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Following the adoption of the rules, the department shall produce and distribute a pamphlet describing the methods of removing or controlling the aquatic noxious weeds that are approved under the rules. The pamphlet serves as the hydraulic project approval for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet; no further hydraulic project approval is required for such a project.

From time to time as information becomes available, the department shall adopt similar rules for additional aquatic noxious weeds or additional activities for removing or controlling aquatic noxious weeds not governed by subsection (1) or (2) of this section and shall produce and distribute one or more pamphlets describing these methods of removal or control. Such a pamphlet serves as the hydraulic project approval for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet; no further hydraulic project approval is required for such a project.

(4) As used in this section, "spartina," "purple loosestrife," and "aquatic noxious weeds" have the meanings prescribed by section 12 of this act.

(5) Nothing in this section shall prohibit the department of fish and wildlife from requiring a hydraulic project approval for those parts of hydraulic projects that are not specifically for the control or removal of spartina, purple loosestrife, or other aquatic noxious weeds.

Sec. 5. RCW 90.58.030 and 1987 c 474 s 1 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

- (1) Administration:
 - (a) "Department" means the department of ecology;
 - (b) "Director" means the director of the department of ecology;
 - (c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;
 - (d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;

(e) "Hearing board" means the shoreline hearings board established by this chapter.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of state-wide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them; except (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of state-wide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those wetlands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Wetlands" or "wetland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all marshes, bogs, swamps, and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology: PROVIDED, That any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

(g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal

public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on wetlands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: PROVIDED, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on wetlands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences, the cost of which does not exceed two thousand five hundred dollars;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Any action commenced prior to December 31, 1982, pertaining to (A) the restoration of interim transportation services as may be necessary as a consequence of the destruction of the Hood Canal bridge, including, but not limited to, improvements to highways, development of park and ride facilities, and development of ferry terminal facilities until a new or reconstructed Hood Canal bridge is open to traffic; and (B) the reconstruction of a permanent bridge at the site of the original Hood Canal bridge;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in section 12 of this act, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW.

Sec. 6. RCW 17.10.010 and 1987 c 438 s 1 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) "Noxious weed" means any plant which when established is highly destructive, competitive, or difficult to control by cultural or chemical practices.

(2) "State noxious weed list" means a list of noxious weeds adopted by the state noxious weed control board which list is divided into three classes:

(a) Class A shall consist of those noxious weeds not native to the state that are of limited distribution or are unrecorded in the state and that pose a serious threat to the state;

(b) Class B shall consist of those noxious weeds not native to the state that are of limited distribution or are unrecorded in a region of the state and that pose a serious threat to that region;

(c) Class C shall consist of any other noxious weeds.

(3) "Person" means any individual, partnership, corporation, firm, the state or any department, agency, or subdivision thereof, or any other entity.

(4) "Owner" means the person in actual control of property, or his agent, whether such control is based on legal or equitable title or on any other interest entitling the holder to possession and, for purposes of liability, pursuant to RCW 17.10.170 or 17.10.210, means the possessor of legal or equitable title or the possessor of an easement: PROVIDED, That when the possessor of an easement has the right to control or limit the growth of vegetation within the boundaries of an easement, only the possessor of such easement shall be deemed, for the purpose of this chapter, an "owner" of the property within the boundaries of such easement.

(5) As pertains to the duty of an owner, the words "control", "contain", "eradicate", and the term "prevent the spread of noxious weeds" shall mean

conforming to the standards of noxious weed control or prevention adopted by rule or regulation by the state noxious weed control board and an activated county noxious weed control board.

(6) "Agent" means any occupant or any other person acting for the owner and working or in charge of the land.

(7) "Agricultural purposes" are those which are intended to provide for the growth and harvest of food and fiber.

(8) "Director" means the director of the department of agriculture or the director's appointed representative.

(9) "Weed district" means a weed district as defined in chapters 17.04 and 17.06 RCW.

(10) "Aquatic noxious weed" means an aquatic plant species that is listed on the state weed list under RCW 17.10.080.

Sec. 7. RCW 90.48.020 and 1987 c 109 s 122 are each amended to read as follows:

Whenever the word "person" is used in this chapter, it shall be construed to include any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Wherever the word "department" is used in this chapter it shall mean the department of ecology.

Whenever the word "director" is used in this chapter it shall mean the director of ecology.

Whenever the words "aquatic noxious weed" are used in this chapter, they have the meaning prescribed under section 12 of this act.

NEW SECTION. Sec. 8. State agencies and local governments may not use any other local, state, or federal permitting requirement, regulatory authority, or legal mechanism to override the legislative intent and statutory mandates of this act.

NEW SECTION. Sec. 9. Spartina removal shall include restoration to return intertidal land and other infested lands to the condition found on adjacent unaffected lands in the same tidal elevation. The department of fish and wildlife, the department of ecology, the department of agriculture, and the department of natural resources shall develop a restoration plan in cooperation with owners of spartina infested lands and shall submit the plan to the appropriate standing committees of the house of representatives and the senate by December 31, 1995.

NEW SECTION. Sec. 10. (1) The state department of agriculture is the lead agency for the control of spartina and purple loosestrife with the advice of the state noxious weed control board.

(2) Responsibilities of the lead agency include:

(a) Coordination of the control program including memorandums of understanding, contracts, and agreements with local, state, federal, and tribal governmental entities and private parties;

(b) Preparation of a state-wide spartina management plan utilizing integrated vegetation management strategies that encompass all of Washington's tidelands. The plan shall be developed in cooperation with local, state, federal, and tribal governments, private landowners, and concerned citizens. The plan shall prioritize areas for control. Nothing in this subsection prohibits the department from taking action to control spartina in a particular area of the state in accordance with a plan previously prepared by the state while preparing the state-wide plan;

(c) Directing on the ground control efforts that include, but are not limited to: (i) Control work and contracts; (ii) spartina survey; (iii) collection and maintenance of spartina location data; (iv) purchasing equipment, goods, and services; (v) survey of threatened and endangered species; and (vi) site-specific environmental information and documents; and

(d) Evaluating the effectiveness of the control efforts.

The lead agency shall report to the appropriate standing committees of the house of representatives and the senate no later than May 15th and December 15th of each year through the year 1999 on the progress of the program, the number of acres treated by various methods of control, and on the funds spent.

NEW SECTION. Sec. 11. This section applies to appropriations made to the department of agriculture specifically for the removal or control of spartina or purple loosestrife or both plants. The legislature finds that: The presence of spartina or purple loosestrife on private lands threatens wildlife habitat and provides a source of renewed infestation for public lands; and effective eradication or control of spartina or purple loosestrife requires concerted efforts on both public and private lands to protect public resources. The department of agriculture may grant funds to other state agencies, local governments, and nonprofit corporations for eradication or control purposes and may use those moneys itself. The department of agriculture may match private funds for eradication or control programs on private property on a fifty-fifty matching

basis. The accounting and supervision of the funds at the local level shall be conducted by the department of agriculture.

NEW SECTION. Sec. 12. (1) Facilitating the control of spartina and purple loosestrife is a high priority for all state agencies.

(2) The department of natural resources is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of natural resources.

(3) The department of fish and wildlife is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of fish and wildlife.

(4) The state parks and recreation commission is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the state parks and recreation commission.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this chapter, RCW 90.48.020, 90.58.030, and section 4 of this act:

(a) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens*.

(b) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum*.

(c) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

NEW SECTION. Sec. 13. Sections 1, 2, and 8 through 12 of this act shall constitute a new chapter in Title 17 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. 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, 1995.

Passed the House April 12, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 256

[Engrossed Substitute Senate Bill 5685]

SALVAGED VEHICLES

AN ACT Relating to salvaged vehicles; amending RCW 46.12.310, 46.80.005, 46.80.010, 46.80.020, 46.80.040, 46.80.050, 46.80.060, 46.80.070, 46.80.080, 46.80.090, 46.80.100, 46.80.110, 46.80.130, 46.80.150, 46.80.160, 46.80.170, 46.80.900, 46.12.030, and 46.70.180; reenacting and amending RCW 46.63.020; adding new sections to chapter 46.12 RCW; adding new sections to chapter 46.80 RCW; creating a new section; repealing RCW 46.12.360 and 46.80.055; and prescribing penalties.

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

NEW SECTION. Sec. I. A new section is added to chapter 46.12 RCW to read as follows:

It is a class C felony for a person to sell or convey a vehicle certificate of ownership except in conjunction with the sale or transfer of the vehicle for which the certificate was originally issued.

Sec. 2. RCW 46.12.310 and 1975-'76 2nd ex.s. c 91 s 2 are each amended to read as follows:

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

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

(3) If reported as stolen, the seizing law enforcement agency shall promptly release such vehicle, watercraft, camper, or parts thereof as have been stolen, to the person who is the lawful owner or the lawful successor in interest, upon receiving proof that such person presently owns or has a lawful right to the possession of the article or articles.

Sec. 3. RCW 46.80.005 and 1977 ex.s. c 253 s 1 are each amended to read as follows:

The legislature finds and declares that the distribution and sale of vehicle parts in the state of Washington vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare and in the exercise of its police power, it is necessary to regulate and license ~~((motor))~~ vehicle wreckers and dismantlers, the buyers-for-resale, and the sellers of second-hand vehicle components doing business in Washington, in order to prevent the sale of stolen vehicle parts, to

prevent frauds, impositions, and other abuses, and to preserve the investments and properties of the citizens of this state.

Sec. 4. RCW 46.80.010 and 1977 ex.s. c 253 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "~~((Motor))~~ Vehicle wrecker~~((;))~~" ~~((whenever used in this chapter, shall))~~ means every person, firm, partnership, association, or corporation engaged in the business of buying, selling, or dealing in vehicles of a type required to be licensed under the laws of this state, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of ~~((any motor))~~ a vehicle, or who buys or sells integral second-hand parts of component material thereof, in whole or in part, or who deals in second-hand ~~((motor))~~ vehicle parts.

(2) "Established place of business~~((;))~~" ~~((whenever used in this chapter, shall))~~ means a building or enclosure which the ~~((motor))~~ vehicle wrecker occupies either continuously or at regular periods and where his books and records are kept and business is transacted and which must conform with zoning regulations.

(3) "Major component part"~~((; whenever used in this chapter, shall))~~ includes at least each of the following vehicle parts: (a) Engines and short blocks; (h) frame; (c) transmission and/or transfer case; (d) cab; (e) door; (f) front or rear differential; (g) front or rear clip; (h) quarter panel; (i) truck bed or box; (j) seat; (k) hood; ~~((and))~~ (l) bumper; (m) fender; and (n) airbag. The director may supplement this list by rule.

(4) "Wrecked vehicle"~~((; whenever used in this chapter, shall))~~ means a vehicle which is disassembled or dismantled or a vehicle which is acquired with the intent to dismantle or disassemble and never again to operate as a vehicle, or a vehicle which has sustained such damage that its cost to repair exceeds the fair market value of a like vehicle which has not sustained such damage, or a damaged vehicle whose salvage value plus cost to repair equals or exceeds its fair market value, if repaired, or a vehicle which has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state for which the salvage value plus cost to repair exceeds its fair market value, if repaired; further, it is presumed that a vehicle is a wreck if it has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state.

Sec. 5. RCW 46.80.020 and 1979 c 158 s 192 are each amended to read as follows:

It ~~((shall be))~~ is unlawful for ~~((any motor vehicle wrecker, as defined herein;))~~ a person to engage in the business of wrecking ~~((motor))~~ vehicles ~~((or trailers))~~ without having first applied for and received a license ~~((from the department of licensing authorizing him so to do)).~~ A person or firm engaged in the unlawful activity is guilty of a gross misdemeanor. A second or subsequent offense is a class C felony.

Sec. 6. RCW 46.80.040 and 1971 ex.s. c 7 s 3 are each amended to read as follows:

~~((Such))~~ The application, together with a fee of twenty-five dollars, and a surety bond as ~~((hereinafter))~~ provided in RCW 46.80.070, shall be forwarded to the department. Upon receipt of the application the department shall, if the application ~~((be))~~ is in order, issue a ~~((motor))~~ vehicle wrecker's license authorizing ~~((him))~~ the wrecker to do business as such and forward the fee~~((, together with an itemized and detailed report,))~~ to the state treasurer, to be deposited in the motor vehicle fund. Upon receiving the certificate the owner shall cause it to be prominently displayed in ~~((his))~~ the place of business, where it may be inspected by an investigating officer at any time.

Sec. 7. RCW 46.80.050 and 1985 c 109 s 7 are each amended to read as follows:

A license issued on this application ~~((shall))~~ remains in force until suspended or revoked and may be renewed annually upon reapplication according to RCW 46.80.030 and upon payment of a fee of ten dollars. ~~((Any motor))~~ A vehicle wrecker who fails or neglects to renew ~~((his))~~ the license before the assigned expiration date shall ~~((be required to))~~ pay the fee for an original ~~((motor))~~ vehicle wrecker license as provided in this chapter.

Whenever a ~~((motor))~~ vehicle wrecker ceases to do business as such or ~~((his))~~ the license has been suspended or revoked, ~~((he))~~ the wrecker shall immediately surrender ~~((such))~~ the license to the department.

Sec. 8. RCW 46.80.060 and 1961 c 12 s 46.80.060 are each amended to read as follows:

The ~~((motor))~~ vehicle wrecker shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of such vehicles ~~((which shall))~~. The special plates must be displayed on vehicles owned and/or operated by ((him)) the wrecker and used in the conduct of ((his)) the business. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number. A wrecker with more than one licensed location in the state may use special plates bearing the same license number for vehicles operated out of any of the licensed locations.

Sec. 9. RCW 46.80.070 and 1977 ex.s. c 253 s 5 are each amended to read as follows:

Before issuing a ~~((motor))~~ vehicle wrecker's license, the department shall require the applicant to file with ~~((said))~~ the department a surety bond in the amount of one thousand dollars, running to the state of Washington and executed by a surety company authorized to do business in the state of Washington. ~~((Such))~~ The bond shall be approved as to form by the attorney general and conditioned ~~((that such))~~ upon the wrecker ((shall conduct his)) conducting the business in conformity with the provisions of this chapter. Any person who ~~((shall have))~~ has suffered any loss or damage by reason of fraud, carelessness,

neglect, violation of the terms of this chapter, or misrepresentation on the part of the wrecking company, ~~((shall have the right to))~~ may institute an action for recovery against ~~((such motor))~~ the vehicle wrecker and surety upon ~~((such))~~ the bond~~((: PROVIDED, That))~~. However, the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond.

Sec. 10. RCW 46.80.080 and 1977 ex.s. c 253 s 6 are each amended to read as follows:

(1) Every ~~((motor))~~ vehicle wrecker shall maintain books or files in which ~~((he))~~ the wrecker shall keep a record and a description of:

(a) Every vehicle wrecked, dismantled, disassembled, or substantially altered by ~~((him))~~ the wrecker; and

(b) Every major component part acquired by ~~((him))~~ the wrecker; together with a bill of sale signed by a seller whose identity has been verified and the name and address of the person, firm, or corporation from whom ~~((he))~~ the wrecker purchased the vehicle or part~~((: PROVIDED, That))~~. Major component parts shall be further identified by the vehicle identification number of the vehicle from which the part came.

(2) ~~((Such))~~ The record shall also contain the following data regarding the wrecked or acquired vehicle or vehicle ~~((which))~~ that is the source of a major component part:

(a) The certificate of title number (if previously titled in this or any other state);

(b) Name of state where last registered;

(c) Number of the last license number plate issued;

(d) Name of vehicle;

(e) Motor or identification number and serial number of the vehicle;

(f) Date purchased;

(g) Disposition of the motor and chassis;

(h) Yard number assigned by the licensee to the vehicle or major component part, which shall also appear on the identified vehicle or part; and

(i) Such other information as the department may require.

(3) ~~((Such))~~ The records shall also contain a bill of sale signed by the seller for other minor component parts acquired by the licensee, identifying the seller by name, address, and date of sale.

(4) ~~((Such))~~ The records shall be maintained by the licensee at his or her established place of business for a period of three years from the date of acquisition.

(5) ~~((Such record shall be))~~ The record is subject to inspection at all times during regular business hours by members of the police department, sheriff's office, members of the Washington state patrol, or officers or employees of the department.

(6) A ~~((motor))~~ vehicle wrecker shall also maintain a similar record of all disabled vehicles that have been towed or transported to the motor vehicle wrecker's place of business or to other places designated by the owner of the

vehicle or his or her representative. This record shall specify the name and description of the vehicle, name of owner, number of license plate, condition of the vehicle and place to which it was towed or transported.

(7) Failure to comply with this section is a gross misdemeanor.

Sec. 11. RCW 46.80.090 and 1979 c 158 s 194 are each amended to read as follows:

Within thirty days after acquiring a vehicle (~~(has been acquired by the motor vehicle wrecker it shall be the duty of such motor)),~~ the vehicle wrecker (~~((to))~~) shall furnish a written report to the department (~~((on forms furnished by the department)).~~). This report shall be in such form as the department shall prescribe and shall be accompanied by (~~((the certificate of title, if the vehicle has been last registered in a state which issues a certificate, or a record of registration if registered in a state which does not issue a certificate of title))~~) evidence of ownership as determined by the department. No (~~(motor))~~) vehicle wrecker (~~((shall))~~) may acquire a vehicle without first obtaining (~~((such record or title. It shall be the duty of the motor))~~) evidence of ownership as determined by the department. The vehicle wrecker (~~((to))~~) shall furnish a monthly report of all acquired vehicles (~~((wrecked, dismantled, disassembled, or substantially changed in form by him)).~~). This report shall be made on forms prescribed by the department and contain such information as the department may require. This statement shall be signed by the (~~(motor))~~) vehicle wrecker or (~~(his))~~) an authorized representative and the facts therein sworn to before a notary public, or before an officer or employee of the department (~~((of licensing))~~) designated by the director to administer oaths or, acknowledge signatures, pursuant to RCW 46.01.180.

Sec. 12. RCW 46.80.100 and 1977 ex.s. c 253 s 8 are each amended to read as follows:

If, after issuing a (~~(motor))~~) vehicle wrecker's license, the bond is canceled by the surety in a method provided by law, the department shall immediately notify the principal covered by (~~(such))~~) the bond (~~((by registered mail))~~) and afford (~~(him))~~) the principal the opportunity of obtaining another bond before the termination of the original (~~((and should such)).~~) If the principal fails, neglects, or refuses to obtain (~~((such))~~) a replacement, the director may cancel or suspend the (~~(motor))~~) vehicle wrecker's license (~~((which has been issued to him under the provisions of this chapter)).~~) Notice of cancellation of the bond may be accomplished by sending a notice by first class mail using the last known address in department records for the principal covered by the bond and recording the transmittal on an affidavit of first class mail.

Sec. 13. RCW 46.80.110 and 1989 c 337 s 17 are each amended to read as follows:

(1) The director or a designee may, pursuant to the provisions of chapter 34.05 RCW, by order deny, suspend, or revoke the license of (~~(any motor))~~) a

vehicle wrecker, or assess a civil fine of up to five hundred dollars for each violation, if the director finds that the applicant or licensee has:

~~((1))~~ (a) Acquired a vehicle or major component part other than by first obtaining title or other documentation as provided by this chapter;

~~((2))~~ (b) Willfully misrepresented the physical condition of any motor or integral part of a ~~((motor))~~ vehicle;

~~((3))~~ (c) Sold, had in ~~((his))~~ the wrecker's possession, or disposed of a ~~((motor))~~ vehicle ~~((or-trailer))~~ or any part thereof when he or she knows that ~~((such))~~ the vehicle or part has been stolen, or appropriated without the consent of the owner;

~~((4))~~ (d) Sold, bought, received, concealed, had in ~~((his))~~ the wrecker's possession, or disposed of a ~~((motor))~~ vehicle ~~((or-trailer))~~ or part thereof having a missing, defaced, altered, or covered manufacturer's identification number, unless approved by a law enforcement officer;

~~((5))~~ (e) Committed forgery or misstated a material fact on any title, registration, or other document covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles;

~~((6))~~ (f) Committed any dishonest act or omission ~~((which))~~ that the director has reason to believe has caused loss or serious inconvenience as a result of a sale of a ~~((motor))~~ vehicle~~((,-trailer,))~~ or part thereof;

~~((7))~~ (g) Failed to comply with any of the provisions of this chapter or with any of the rules adopted under it, or with any of the provisions of Title 46 RCW relating to registration and certificates of title of vehicles;

~~((8))~~ (h) Procured a license fraudulently or dishonestly ~~((or-that-such-license-was-erroneously-issued));~~

~~((9))~~ (i) Been convicted of a crime that directly relates to the business of a vehicle wrecker and the time elapsed since conviction is less than ten years, or suffered any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, conviction means in addition to a final conviction in either a federal, state, or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended.

(2) In addition to actions by the department under this section, it is a gross misdemeanor to violate subsection (I) (a), (b), or (h) of this section.

NEW SECTION. Sec. 14. A new section is added to chapter 46.80 RCW to read as follows:

If a person whose vehicle wrecker license has previously been canceled for cause by the department files an application for a license to conduct business as a vehicle wrecker, or if the department is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license has previously been

canceled for cause, the department may refuse to issue the person a license to conduct business as a vehicle wrecker.

Sec. 15. RCW 46.80.130 and 1971 ex.s. c 7 s 9 are each amended to read as follows:

(1) It ~~((shall be))~~ is unlawful for ~~((any motor))~~ a vehicle wrecker to keep ~~((any motor))~~ a vehicle or any integral part thereof in any place other than the established place of business, designated in the certificate issued by the department, without permission of the department.

(2) All premises containing ~~((such motor))~~ vehicles or parts thereof shall be enclosed by a wall or fence of such height as to obscure the nature of the business carried on therein. To the extent reasonably necessary or permitted by the topography of the land, the department ~~((shall have the right to))~~ may establish specifications or standards for ~~((said))~~ the fence or wall ~~((+ PROVIDED, HOWEVER, That such))~~. The wall or fence shall be painted or stained a neutral shade ~~((which shall))~~ that blends in with the surrounding premises, and ~~((that such))~~ the wall or fence must be kept in good repair. A living hedge of sufficient density to prevent a view of the confined area may be substituted for such a wall or fence. Any dead or dying portion of ~~((such))~~ the hedge shall be replaced.

(3) Violation of subsection (1) of this section is a gross misdemeanor.

Sec. 16. RCW 46.80.150 and 1983 c 142 s 9 are each amended to read as follows:

It shall be the duty of the chiefs of police, or the Washington state patrol, in cities having a population of over five thousand persons, and in all other cases the Washington state patrol, to make periodic inspection of the ~~((motor))~~ vehicle wrecker's licensed premises and records provided for in this chapter during normal business hours, and furnish a certificate of inspection to the department in such manner as may be determined by the department ~~((+ PROVIDED, That the above inspection))~~. In any instance ((can be made by)), an authorized representative of the department may make the inspection.

Sec. 17. RCW 46.80.160 and 1961 c 12 s 46.80.160 are each amended to read as follows:

Any municipality or political subdivision of this state ~~((which))~~ that now has or subsequently makes provision for the regulation of ~~((automobile))~~ vehicle wreckers shall comply strictly with the provisions of this chapter.

Sec. 18. RCW 46.80.170 and 1977 ex.s. c 253 s 11 are each amended to read as follows:

~~((It shall be))~~ Unless otherwise provided by law, it is a ((gross)) misdemeanor for any person to violate any of the provisions of this chapter or the rules ~~((and regulations promulgated as provided))~~ adopted under this chapter ~~((, and any person so convicted shall be punished by imprisonment for not less than thirty days or more than one year in jail or by a fine of one thousand dollars))~~.

NEW SECTION. Sec. 19. A new section is added to chapter 46.80 RCW to read as follows:

(1) If it appears to the director that an unlicensed person has engaged in an act or practice constituting a violation of this chapter, or a rule adopted or an order issued under this chapter, the director may issue an order directing the person to cease and desist from continuing the act or practice. The director shall give the person reasonable notice of and opportunity for a hearing. The director may issue a temporary order pending a hearing. The temporary order remains in effect until ten days after the hearing is held and becomes final if the person to whom the notice is addressed does not request a hearing within fifteen days after receipt of the notice.

(2) The director may assess a fine of up to one thousand dollars with the final order for each act or practice constituting a violation of this chapter by an unlicensed person.

NEW SECTION. Sec. 20. A new section is added to chapter 46.80 RCW to read as follows:

The department of licensing or its authorized agent may examine or subpoena any persons, books, papers, records, data, vehicles, or vehicle parts bearing upon the investigation or proceeding under this chapter.

The persons subpoenaed may be required to testify and produce any books, papers, records, data, vehicles, or vehicle parts that the director deems relevant or material to the inquiry.

The director or an authorized agent may administer an oath to the person required to testify, and a person giving false testimony after the administration of the oath is guilty of perjury in the first degree.

A court of competent jurisdiction may, upon application by the director, issue to a person who fails to comply, an order to appear before the director or officer designated by the director, to produce documentary or other evidence touching the matter under investigation or in question.

Sec. 21. RCW 46.80.900 and 1977 ex.s. c 253 s 13 are each amended to read as follows:

The provisions of this chapter shall be liberally construed to the end that traffic in stolen vehicle parts may be prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of wrecking (~~(motor)~~) vehicles or selling used vehicle parts in this state and reliable persons may be encouraged to engage in businesses of wrecking or reselling vehicle parts in this state.

NEW SECTION. Sec. 22. (1) The legislature recognizes that currently the state patrol inspects rebuilt vehicles for stolen parts. However, they are not authorized to perform complete safety inspections.

(2) The state patrol shall assemble a study group and complete a study, to be submitted to the legislative transportation committee no later than January 1, 1996, on the feasibility of implementing safety inspections for vehicles that are

rebuilt after surrender of the certificate of ownership to the department of licensing under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss. The study shall include, but is not limited to:

- (a) An examination of safety inspection systems in other states;
- (b) A determination of how a safety inspection program might be implemented in Washington state;
- (c) An analysis of the cost of conducting a safety inspection and who should be responsible for bearing those costs; and
- (d) An evaluation of whether state agencies or private business might most effectively and efficiently conduct safety inspections.

(3) The study group prescribed in subsection (2) of this section must include representatives of the state patrol, the department of licensing, the Washington traffic safety commission, the insurance industry, the autobody industry, and other appropriate groups.

(4) Section 24 of this act and RCW 46.12.050 require notification on the certificates of ownership and registration as to whether a vehicle has previously been destroyed or declared a total loss. The department of licensing, in consultation with the study group members prescribed in subsection (3) of this section, shall study the feasibility of expanding the notification requirement to apply to all vehicles, regardless of age. The study group shall also develop a recommendation regarding the feasibility of differentiating on the certificates of ownership and registration whether the vehicle has sustained cosmetic damage or structural damage. The department shall report its findings to the legislative transportation committee no later than January 1, 1996.

Sec. 23. RCW 46.12.030 and 1990 c 238 s 1 are each amended to read as follows:

The application for certificate of ownership shall be upon a blank form to be furnished by the department and shall contain:

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

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

(3) Such other information as the department may require. The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either. A physical examination of the vehicle is mandatory if it previously was registered in any other state or country or if it has been rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the foreign title and registration certificate. If the vehicle is from a jurisdiction that does not issue titles, the inspection must

verify that the vehicle identification number is genuine and agrees with the number shown on the registration certificate. The inspection must also confirm that the license plates on the vehicle are those assigned to the vehicle by the jurisdiction in which the vehicle was previously licensed. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

The application shall be subscribed by the registered owner and be sworn to by that applicant in the manner described by RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form.

NEW SECTION. Sec. 24. A new section is added to chapter 46.12 RCW to read as follows:

(1) Effective January 1, 1997, the department shall issue a unique certificate of ownership and certificate of license registration, as required by chapter 46.16 RCW, for vehicles less than four years old that are rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss. Each certificate shall conspicuously display across its front, a word indicating that the vehicle was rebuilt.

(2) Beginning January 1, 1997, upon inspection of a vehicle that has been rebuilt under RCW 46.12.030, the state patrol shall securely affix or inscribe a marking at the driver's door latch pillar indicating that the vehicle has previously been destroyed or declared a total loss.

(3) It is a class C felony for a person to remove the marking prescribed in subsection (2) of this section.

(4) The department may adopt rules as necessary to implement this section.

Sec. 25. RCW 46.63.020 and 1994 c 275 s 33 and 1994 c 141 s 2 are each reenacted and amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381 (6) or (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.021 relating to driving without a valid driver's license;

(11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(12) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(14) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(16) RCW 46.25.170 relating to commercial driver's licenses;

(17) Chapter 46.29 RCW relating to financial responsibility;

(18) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(19) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(21) RCW 46.48.175 relating to the transportation of dangerous articles;

(22) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(24) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

(26) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(28) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;

(30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(31) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(33) RCW 46.61.500 relating to reckless driving;

(34) RCW 46.61.502, 46.61.504, 46.61.5051, 46.61.5052, and 46.61.5053 relating to persons under the influence of intoxicating liquor or drugs;

(35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(36) RCW 46.61.522 relating to vehicular assault;

(37) RCW 46.61.525 relating to negligent driving;

(38) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

(39) RCW 46.61.530 relating to racing of vehicles on highways;

(40) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(41) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(42) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(43) Chapter 46.65 RCW relating to habitual traffic offenders;

(44) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(45) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(46) Chapter 46.80 RCW relating to motor vehicle wreckers;

(47) Chapter 46.82 RCW relating to driver's training schools;

(48) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(49) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Sec. 26. RCW 46.70.180 and 1994 c 284 s 13 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 or her 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:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and section 24 of this act; and

(ii) 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 the "on deposit" funds with assets of the dealer, salesman, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). 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 or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(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 or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she 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) the 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 (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

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

(1) RCW 46.12.360 and 1990 c 42 s 325, 1980 c 32 s 7, & 1975-'76 2nd ex.s. c 91 s 7; and

(2) RCW 46.80.055 and 1985 c 109 s 8.

Passed the Senate April 19, 1995.

Passed the House April 12, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 257

[Substitute Senate Bill 5724]

STATE COURT REPORTS

AN ACT Relating to state court reports; and amending RCW 2.32.160, 2.32.170, 40.04.030, 40.04.100, and 40.04.110.

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

Sec. 1. RCW 2.32.160 and 1984 c 287 s 7 are each amended to read as follows:

There is hereby created a commission ~~((to supervise))~~ advisory to the supreme court regarding the publication of the decisions of the supreme court and court of appeals of this state in both the form of advance sheets for temporary use and in permanent form, to be known as the commission on supreme court reports, and to ~~((consist of six members, as follows: The))~~ include the reporter of decisions, the state law librarian, and such other members, including a judge of the court of appeals and a member in good standing of the Washington state bar association, as determined by the chief justice of the supreme court, who shall be chairman of the commission~~((, the reporter of decisions of the supreme court, the state law librarian, a judge of the court of appeals designated by the chief judges, the public printer, and a representative~~

of the ~~Washington state bar who shall be appointed by the president thereof~~). Members of the commission shall serve as such without additional or any compensation: PROVIDED, That members shall be compensated in accordance with RCW 43.03.240.

Sec. 2. RCW 2.32.170 and 1943 c 185 s 2 are each amended to read as follows:

~~The commission ((is authorized and directed, from time to time: To determine all matters whatsoever,)) shall make recommendations to the supreme court on matters pertaining to the publication ((which is defined as including printing, binding, sale and distribution)) of such decisions, in both ((such)) temporary and permanent forms((, including the making of all specifications for material, workmanship, binding, size, number of pages, contents, and arrangement thereof, frequency of publication, and all other matters, whether similar to the foregoing or not, that relate to such publication: PROVIDED, That the specifications shall require that the type to be used shall not be smaller than eleven point on a thirteen point slug; to establish a uniform price at which such decisions, in temporary and permanent form, either separately or together, shall be sold to any purchaser, public or private, including the state, its departments, subdivisions, institutions, and agencies; to establish said price at the amount which is, as nearly as may be, equal to the cost of such publication and the expenses incidental thereto, which price, if it is deemed necessary and proper by the commission in the light of substantially changed costs and expenses, may be adjusted annually, and in no event oftener than semiannually; to enter, in the name of the commission, into any and all contracts with any persons, firms, and corporations, deemed by the commission necessary and proper to carry into effect the foregoing powers, with authority to include all such terms and conditions as the commission in its discretion shall deem fit; to modify or terminate, with the consent of the other party thereto, any contract existing on June 9, 1943 for the publication of such decisions)). The commission shall by July 1, 1997, develop a policy that ensures that if any material prepared pursuant to RCW 2.32.110 is licensed for resale, the material is made available for licensing to all commercial resellers on an equal and non-exclusive basis.~~

*Sec. 3. RCW 40.04.030 and 1971 c 42 s 2 are each amended to read as follows:

The state law librarian shall receive from the public printer, whose duty it shall be to deliver to him or her, all bound volumes of the session laws, and the house and senate journals as the same are published. ((He shall also receive from the publisher of the supreme court reports and the court of appeals reports of the state of Washington such copies as are purchased by the supreme court for the use of the state.))

*Sec. 3 was vetoed. See message at end of chapter.

Sec. 4. RCW 40.04.100 and 1991 c 363 s 113 are each amended to read as follows:

The supreme court reports and the court of appeals reports shall be distributed by the ~~((state law librarian))~~ reporter of decisions as follows:

(1) Each supreme court justice and court of appeals judge is entitled to receive one copy of each volume containing an opinion signed by him or her.

(2) The state law ~~((librarian))~~ library shall ~~((retain))~~ receive such copies as are necessary of each for the benefit of the state law library, the supreme court and its subsidiary offices; and the court of appeals and its subsidiary offices~~((; he or she shall provide one copy each for the official use of the attorney general and for each assistant attorney general maintaining his or her office in the attorney general's suite; three copies for the office of prosecuting attorney, in each county with a population of two hundred ten thousand or more; two copies for such office in each county with a population of from one hundred twenty five thousand to less than two hundred ten thousand, and one copy for each other prosecuting attorney; one for each United States district court room and every superior court room in this state if regularly used by a judge of such courts; one copy for the use of each state department maintaining a separate office at the state capitol; one copy to the office of financial management, and one copy to the division of inheritance tax and escheats; one copy each to the United States supreme court, to the United States district attorney's offices at Seattle and Spokane, to the office of the United States attorney general, the library of the circuit court of appeals of the ninth circuit, the Seattle public library, the Tacoma public library, the Spokane public library, the University of Washington library, and the Washington State University library; three copies to the Library of Congress; and, for educational purposes, twelve copies to the University of Washington law library, two copies to the University of Puget Sound law library, and two copies to the Gonzaga University law school library and to such other accredited law school libraries as are hereafter established in this state; six copies to the King county law library; and one copy to each county law library organized pursuant to law in each county with a population of forty thousand or more)).~~

(3) The ~~((state law librarian is likewise authorized))~~ reporter shall provide one copy of each volume to each county for use in the county law library and one copy of the same to each accredited law school established in the state.

(4) The reporter shall likewise provide the state law library with such copies of volumes as necessary to exchange copies of the supreme court reports and the court of appeals reports for similar reports of other states, territories, and~~((or))~~ governments~~((; or for other legal materials, and to make such other and further distribution as in his or her judgment seems proper)).~~

Sec. 5. RCW 40.04.110 and 1971 c 42 s 4 are each amended to read as follows:

On the publication of each volume of reports the ~~((supreme court must purchase for the use of the state, from the))~~ publisher to whom the contract is awarded~~((; three hundred))~~ shall provide to the reporter the number of copies of each volume of supreme court and court of appeals reports~~((; and such additional~~

~~copies as the court may deem to be)) necessary((, at the price named in the contract, and deliver the same to the law librarian of)) for the reporter and the state law library((, who shall distribute same as required by the provisions of)) to comply with RCW 40.04.100.~~

Passed the Senate April 19, 1995.

Passed the House April 5, 1995.

Approved by the Governor May 5, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 5, 1995.

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

"I am returning herewith, without my approval as to section 3, Substitute Senate Bill No. 5724 entitled:

"AN ACT Relating to state court reports;"

This bill reorganizes the Commission on Supreme Court Reports and shifts certain duties between the State Law Librarian and the Supreme Court Reporter. This will assist the Commission in becoming self-funded and has my full support.

However, section 3 presents an irreconcilable double amendment to RCW 40.04.030 with Substitute Senate Bill No. 5067 which has already been signed into law. Section 1 of Substitute Senate Bill No. 5067 makes various changes in the delivery of session laws and house and senate journals. Section 3 of Substitute Senate Bill No. 5724 makes no such substantive changes but deletes language amended by section 1 of Substitute Senate Bill No. 5067 requiring the publisher of the supreme court and court of appeals reports to deliver copies to the state law librarian.

Vetoing section 3 will avoid unnecessary confusion in the implementation of these measures.

For this reason, I am vetoing section 3 of Substitute Senate Bill No. 5724.

With the exception of section 3, Substitute Senate Bill No. 5724 is approved."

CHAPTER 258

[Substitute Senate Bill 5742]

VOCATIONAL AGRICULTURE TEACHERS—RECRUITMENT

AN ACT Relating to the recruitment, preparation, and continuing education of vocational agriculture teachers; adding a new section to chapter 28A.415 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature recognizes that the state of Washington has a rich agricultural history and that agriculture continues to be one of the most basic and important industries of the state. The legislature finds that the growth of this vital industry requires that students continue to receive vocational agriculture instruction from trained and qualified vocational agriculture instructors. The legislature further finds that the number of qualified vocational agriculture educators is declining. The legislature finds that a vocational agriculture teacher recruitment program is necessary to protect the educational and career opportunities for students with interests in vocational agriculture.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.415 RCW to read as follows:

(1) The Washington state vocational agriculture teacher recruitment program is established. The program shall be designed by the state board of education, in consultation with the higher education coordinating board, representatives of institutions of higher education, education organizations having an interest in teacher recruitment issues, state-wide agricultural business organizations, organizations having an interest in agriculture education, the superintendent of public instruction, the state board for community and technical colleges, and the department of agriculture. The program shall be designed to recruit students who are in grades nine through twelve and adults who have entered other occupations to be future vocational agriculture teachers.

(2) The program shall include the following:

(a) Encouraging students in grades nine through twelve to acquire the academic and related skills necessary to prepare for the study of vocational agriculture at an institution of higher education;

(b) Promoting vocational agriculture teaching career opportunities to develop an awareness of the opportunities in the education profession;

(c) Providing opportunities for students to experience the application of regular high school course work to activities related to a teaching career in vocational agriculture;

(d) Providing information on the transferability of skills learned in other occupations and professions to activities related to a teaching career in vocational agriculture;

(e) Providing opportunities for underrepresented populations to participate in activities related to a teaching career in vocational agriculture; and

(f) Providing for increased cooperation among institutions of higher education including community colleges, the superintendent of public instruction, the state board of education, and local school districts in working toward the goals of the program.

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, 1995, in the omnibus appropriations act, this act is null and void.

Passed the Senate April 19, 1995.

Passed the House April 12, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 259

[Senate Bill 5748]

DISCRIMINATION LAW—REVISIONS

AN ACT Relating to expanding the state law against discrimination; amending RCW 49.60.010 and 49.60.260; reenacting and amending RCW 49.60.040, 49.60.222, 49.60.225, and 49.60.240; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 49.60.010 and 1993 c 510 s 1 are each amended to read as follows:

This chapter shall be known as the "law against discrimination". It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

Sec. 2. RCW 49.60.040 and 1993 c 510 s 4 and 1993 c 69 s 3 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) "Marital status" means the legal status of being married, single, separated, divorced, or widowed;

(8) "National origin" includes "ancestry";

(9) "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, national origin, or with any sensory, mental, or physical disability, or the use of a trained guide dog or service dog by a disabled person, to be treated as not welcome, accepted, desired, or solicited;

(10) "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;

(11) "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;

(12) "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;

(13) " 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;

(14) "Sex" means gender;

(15) "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;

(16) "Complainant" means the person who files a complaint in a real estate transaction;

(17) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction;

(18) "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;

~~((18))~~ (19) "Families with children status" means ~~((when))~~ one or more individuals who have not attained the age of eighteen years ~~((is))~~ being 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;

(20) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units;

(21) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

Sec. 3. RCW 49.60.222 and 1993 c 510 s 17 and 1993 c 69 s 5 are each reenacted and 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 disability, or the use of a trained guide dog or service dog by a disabled person:

(a) To refuse to engage in a real estate transaction with a person;

(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;

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(d) To refuse to negotiate for a real estate transaction with a person;

(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 the person to inspect real property;

(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 to a person residing in or intending to reside in that dwelling after it is sold, rented, or made ~~((unavailable))~~ available; or to 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;

(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;

(i) To expel a person from occupancy of real property;

(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

(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))~~ premises 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 covered multifamily dwellings and premises 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.))~~

Nothing in (a) or (b) of this subsection shall apply to: (i) a single-family house rented or leased by the owner if the owner does not own or have an interest in the proceeds of the rental or lease of more than three such single-family houses at one time, the rental or lease occurred without the use of a real estate broker or salesperson, as defined in RCW 18.85.010, and the rental or lease occurred without the publication, posting, or mailing of any advertisement, sign, or statement in violation of subsection (1)(g) of this section; or (ii) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the rooms or units as his or her residence.

(3) Notwithstanding any other provision of 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 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 disabled person except as otherwise required by law. Nothing in this section affects the rights, 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. 4. RCW 49.60.225 and 1993 c 510 s 20 and 1993 c 69 s 9 are each reenacted and amended to read as follows:

(1) When a reasonable cause determination has been made under RCW 49.60.240 that an unfair practice 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 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 49.60.224, 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 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 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. 5. RCW 49.60.240 and 1993 c 510 s 22 and 1993 c 69 s 12 are each reenacted and 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 provided 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 provided to the complainant and the respondent.

The commission may adopt rules, including procedural time requirements, for processing complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225 and which may be consistent with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), but which in no case shall exceed or be more restrictive than the requirements or standards of such act.

Sec. 6. RCW 49.60.260 and 1993 c 69 s 15 are each amended to read as follows:

(1) The commission or any person entitled to relief of a final order 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 or any person entitled to relief of a final order 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.

(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 noncomplying party with a copy of the court order and the petition.

(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.

(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.

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, 1995.

Passed the Senate April 19, 1995.

Passed the House April 13, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 260

[Substitute Senate Bill 5799]

ADULT FAMILY HOMES—LICENSING AND OPERATION

AN ACT Relating to adult family home licensing and operation; and amending RCW 70.128.005, 70.128.010, 70.128.040, 70.128.060, 70.128.120, and 70.128.130; reenacting and amending RCW 18.130.040; adding a new chapter to Title 18 RCW; and providing an effective date.

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

Sec. 1. RCW 70.128.005 and 1989 c 427 s 14 are each amended to read as follows:

The legislature finds that adult family homes are an important part of the state's long-term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents. Persons with functional limitations have broadly varying service needs. Adult family homes that can meet those needs are an essential component of a long-term system. The legislature further finds that different populations living in adult family homes, such as the developmentally disabled and the elderly, often have significantly different needs and capacities from one another.

It is the legislature's intent that department rules and policies relating to the licensing and operation of adult family homes recognize and accommodate the different needs and capacities of the various populations served by the homes.

Furthermore, the development and operation of adult family homes that can provide quality personal care and special care services should be encouraged.

Sec. 2. RCW 70.128.010 and 1989 c 427 s 16 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a regular family abode (~~((of))~~) in which a person or persons (~~who are providing~~) provide personal care, special care, room, and board to more than one but not more than (~~(four))~~ six adults who are not related by blood or marriage to the person or persons providing the services(~~(; except that a maximum of six adults may be permitted if the department determines that the home is of adequate size and that the home and the provider are capable of meeting standards and qualifications as provided for in this act))~~).

(2) "Provider" means any person who is licensed under this chapter to operate an adult family home. (~~The provider shall reside at the adult family home, except that exceptions may be authorized by the department for good cause, as defined in rule.~~) For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.

(3) "Department" means the department of social and health services.

(4) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(5) "Adults" means persons who have attained the age of eighteen years.

(6) "Home" means an adult family home.

(7) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(8) "Special care" means care beyond personal care as defined by the department, in rule.

(9) "Capacity" means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home and who received special care.

Sec. 3. RCW 70.128.040 and 1989 c 427 s 18 are each amended to read as follows:

(1) The department shall adopt rules and standards with respect to (~~((all))~~) adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. The rules and standards relating to applicants and operators shall address the differences between individual providers and providers that are partnerships, corporations, associations, or companies. The rules and standards shall also recognize and be appropriate to the different needs and capacities of the various populations served by adult family homes such as but not limited to the developmentally disabled and the elderly. In developing rules and standards the department shall recognize

the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for ~~((homes))~~ applicants and providers explaining licensure requirements and procedures.

(2) In developing the rules and standards, the department shall consult with all divisions and administrations within the department serving the various populations living in adult family homes, including the division of developmental disabilities and the aging and adult services administration. Involvement by the divisions and administration shall be for the purposes of assisting the department to develop rules and standards appropriate to the different needs and capacities of the various populations served by adult family homes. During the initial stages of development of proposed rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the rules under consideration and solicit written recommendations regarding their form and content.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter.

Sec. 4. RCW 70.128.060 and 1989 c 427 s 20 are each amended to read as follows:

(1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) The department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter ~~((; and that))~~, unless (a) the applicant has ((no)) prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation or nonrenewal of a license; or (b) the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within ~~((ten))~~ twenty-eight days after receipt of the notice of denial.

(5) ~~((A provider shall not be licensed for more than one adult family home. Exceptions may be authorized by the department for good cause, as defined in rule. The department shall submit to appropriate committees of the legislature,~~

~~by December 1, 1991, a report on the number and type of good cause exceptions granted.~~

(6)) The department shall not issue a license to a provider if the department finds that the provider or any partner, officer, director, managerial employee, or owner of five percent or more if the provider has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(6) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(7) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(8) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(9) The license fee shall be set at fifty dollars per year for each home. A fifty dollar processing fee shall also be charged each home when the home is initially licensed.

Sec. 5. RCW 70.128.120 and 1989 c 427 s 24 are each amended to read as follows:

An adult family home provider shall have the following minimum qualifications:

- (1) Twenty-one years of age or older;
- (2) Good moral and responsible character and reputation;
- (3) Literacy; ~~((and))~~
- (4) Management and administrative ability to carry out the requirements of this chapter;
- (5) Satisfactory completion of department-approved initial training and continuing education training as specified by the department in rule;
- (6) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;
- (7) Not been convicted of any crime listed in RCW 43.43.830 and 43.43.842; and
- (8) Registered with the department of health.

Sec. 6. RCW 70.128.130 and 1989 c 427 s 26 are each amended to read as follows:

(1) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(2) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(3) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have smoke detectors in each bedroom where a resident is located, shall have fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(4) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(5) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(6) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent ~~((that the provider is a licensed health care professional for whom the administration of medications is within the scope of practice under Washington))~~ authorized by law.

(7) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(8) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842. Except that a person may be conditionally employed pending the completion of a criminal conviction background inquiry.

(9) A provider shall offer activities to residents under care as defined by the department in rule.

(10) An adult family home provider shall ensure that staff are competent and receive necessary training to perform assigned tasks.

NEW SECTION. Sec. 7. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Secretary" means the secretary of the department of health.

(2) "Adult family home" means a regular family abode of a person or persons who provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(3) "Operator" means a provider who is licensed under chapter 70.128 RCW to operate an adult family home.

(4) "Person" includes an individual, firm, corporation, partnership, or association.

NEW SECTION. Sec. 8. A person who operates an adult family home shall register the home with the secretary. Each separate location of the business of an adult family home shall have a separate registration.

The secretary, by rule, shall establish forms and procedures for the processing of operator registration applications, including the payment of registration fees pursuant to RCW 43.70.250. An application for an adult family home operator registration shall include at least the following information:

- (1) The names and addresses of the operator of the adult family home; and
- (2) If the operator is a corporation, copies of its articles of incorporation and current bylaws, together with the names and addresses of its officers and directors.

A registration issued by the secretary in accordance with this section shall remain effective for a period of one year from the date of its issuance unless the registration is revoked or suspended pursuant to section 9 of this act, or unless the adult family home is sold or ownership or management is transferred, in which case the registration of the home shall be voided and the operator shall apply for a new registration.

NEW SECTION. Sec. 9. The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of registration and the discipline of persons registered under this chapter. The secretary shall be the disciplinary authority under this chapter.

NEW SECTION. Sec. 10. Sections 7 through 9 of this act shall constitute a new chapter in Title 18 RCW.

Sec. 11. RCW 18.130.040 and 1994 sp.s. c 9 s 603 and 1994 c 17 s 19 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions 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 and x-ray technicians registered 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 under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified under chapter 18.79 RCW;

(xiii) Health care assistants certified under chapter 18.135 RCW;

(xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xv) Sex offender treatment providers certified under chapter 18.155 RCW;

~~((and))~~

(xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205; and

(xvii) Persons registered as adult family home operators under section 8 of this act.

(h) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW;

(iv) The board on fitting and dispensing of hearing aids as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) 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;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

(xiv) 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. This chapter also governs any investigation, hearing, or proceed-

ing 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.

NEW SECTION. Sec. 12. Sections 7 through 11 of this act shall take effect January 1, 1996.

Passed the Senate April 19, 1995.

Passed the House April 12, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 261

[Senate Bill 5898]

OPEN BURNING OF SEED GRASSES

AN ACT Relating to open burning of grasses grown for seed; amending RCW 70.94.656 and 70.94.120; and declaring an emergency.

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

Sec. 1. RCW 70.94.656 and 1991 sp.s. c 13 s 28 are each amended to read as follows:

It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Any study conducted pursuant to this section shall be conducted by Washington State University. The university may not charge more than eight percent for administrative overhead. Prior to the issuance of any permit for such burning under RCW 70.94.650, there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury.

(2) The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in ~~((this))~~ subsection (1) of this section. ~~((For the conduct of any such study or studies, the department may contract with public or private entities: PROVIDED, That))~~ Whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund.

The fee collected under ~~((this))~~ subsection (1) of this section shall constitute the research portion of fees required under RCW 70.94.650 for open burning of grass grown for seed.

~~((2))~~ (3) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

~~((3))~~ (4) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

~~((4))~~ (5) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

(6) By November 1, 1996, and every two years thereafter until grass seed burning is prohibited, Washington State University shall submit to the appropriate standing committees of the legislature a brief report assessing the potential of the university's research to result in economical and practical alternatives to grass seed burning.

Sec. 2. RCW 70.94.120 and 1969 ex.s. c 168 s 14 are each amended to read as follows:

(1) The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice given by the county auditor to each member of the city selection committee of each county and he shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The county auditor shall act as recording officer, maintain its records and give appropriate notice of its proceedings and actions.

(2) As an alternative to meeting in accordance with subsection (1) of this section, the county auditor may mail ballots by certified mail to the members of the city selection committee, specifying a date by which to complete the ballot, and a date by which to return the completed ballot. Each mayor who chooses to participate in the balloting shall write in the choice for appointment, sign the ballot, and return the ballot to the county auditor. Each completed ballot shall be date-stamped upon receipt by the mayor or staff of the mayor of the city or

town. The timely return of completed ballots by a majority of the members of each city selection committee constitutes a quorum and the common choice by a majority of the quorum constitutes a valid appointment.

(3) Balloting shall be preceded by at least two weeks' written notice, given by the county auditor to each member of the city selection committee. A similar notice shall be given to the general public by publication in a newspaper of general circulation in the authority.

***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.*

*Sec. 3 was vetoed. See message at end of chapter.

Passed the Senate April 19, 1995.

Passed the House April 12, 1995.

Approved by the Governor May 5, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 5, 1995.

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

"I am returning herewith, without my approval as to section 3, Senate Bill No. 5898 entitled:

"AN ACT Relating to open burning of grasses grown for seed;"

The subject of this legislation is research for alternatives to grass seed burning. However, section 3 contains an emergency clause indicating this act is necessary "for the immediate preservation of the public peace, health or safety or support of state government. Preventing this bill from being subject to a referendum under Article II, section 1(b) of the state Constitution unnecessarily denies the people of this state their power, at their own option, to approve or reject this bill at the polls.

For this reason, I am vetoing section 3 of Senate Bill No. 5898.

With the exception of section 3, Senate Bill No. 5898 is approved."

CHAPTER 262

[Senate Bill 5956]

COLLECTION OF COURT-ORDERED LEGAL FINANCIAL OBLIGATIONS

AN ACT Relating to collection of unpaid court-ordered legal financial obligations; and amending RCW 36.18.190.

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

Sec. 1. RCW 36.18.190 and 1994 c 185 s 9 are each amended to read as follows:

Superior court clerks may contract with collection agencies under chapter 19.16 RCW or may use county collection services for the collection of unpaid ~~((court))~~ court-ordered legal financial obligations as enumerated in RCW 9.94A.030 that are ordered pursuant to a felony or misdemeanor conviction. The costs for the agencies or county services shall be paid by the debtor. The

superior court may, at sentencing or at any time within ten years, assess as court costs the moneys paid for remuneration for services or charges paid to collection agencies or for collection services. Collection may not be initiated with respect to a criminal offender who is under the supervision of the department of corrections without the prior agreement of the department. Superior court clerks are encouraged to initiate collection action with respect to a criminal offender who is under the supervision of the department of corrections, with the department's approval.

Any contract with a collection agency shall be awarded only after competitive bidding. Factors that a court clerk shall consider in awarding a collection contract include but are not limited to: (1) A collection agency's history and reputation in the community; and (2) the agency's access to a local data base that may increase the efficiency of its collections. Contracts may specify the scope of work, remuneration for services, and other charges deemed appropriate.

The servicing of an unpaid court obligation does not constitute assignment of a debt, and no contract with a collection agency may remove the court's control over unpaid obligations owed to the court.

Passed the Senate April 19, 1995.

Passed the House April 6, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 263

[Engrossed Senate Bill 5998]

ON-SITE SEWAGE SYSTEMS RULES—LOCAL WAIVERS

AN ACT Relating to local government waivers from specific requirements of on-site sewage system rules adopted by the board of health; and adding a new section to chapter 70.05 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 70.05 RCW to read as follows:

The local health officer may grant a waiver from specific requirements adopted by the state board of health for on-site sewage systems if:

(1) The on-site sewage system for which a waiver is requested is for sewage flows under three thousand five hundred gallons per day;

(2) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(3) The local health officer determines that the waiver is consistent with the standards in, and the intent of, the state board of health rules; and

(4) The local health officer submits quarterly reports to the department regarding any waivers approved or denied.

Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and

intent of, the state board of health rules, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns.

If upon further review of the quarterly reports, the department finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected.

Passed the Senate April 19, 1995.

Passed the House April 6, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 264

[Engrossed Senate Bill 6045]

RETIRED ADMINISTRATORS—SERVICE WITHOUT LOSS OF PENSION

AN ACT Relating to retired administrators; amending RCW 41.32.570; and declaring an emergency.

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

Sec. 1. RCW 41.32.570 and 1994 c 69 s 2 are each amended to read as follows:

(1) Any retired teacher or retired administrator who enters service in any public educational institution in Washington state shall cease to receive pension payments while engaged in such service: PROVIDED, That service may be rendered up to seventy-five days per school year without reduction of pension.

(2) In addition to the seventy-five days of service permitted under subsection (1) of this section, a retired teacher or retired administrator may also serve only as a substitute teacher for up to an additional fifteen days per school year without reduction of pension if:

(a) A school district, which is not a member of a multidistrict substitute cooperative, determines that it has exhausted or can reasonably anticipate that it will exhaust its list of qualified and available substitutes and the school board of the district adopts a resolution to make its substitute teachers who are retired teachers or retired administrators eligible for the additional fifteen days of extended service once the list of qualified and available substitutes has been exhausted. The resolution by the school district shall state that the services of retired teachers and retired administrators are necessary to address the shortage of qualified and available substitutes. The resolution shall be valid only for the school year in which it is adopted. The district shall forward a copy of the resolution with a list of retired teachers and retired administrators who have been employed as substitute teachers to the department and may notify the retired teachers and retired administrators included on the list of their right to take advantage of the provisions of this subsection; or

(b) A multidistrict substitute cooperative determines that the school districts have exhausted or can reasonably anticipate that they will exhaust their list of qualified and available substitutes and each of the school boards adopts a resolution to make their substitute teachers or retired administrators who are retired teachers eligible for the extended service once the list of qualified and available substitutes has been exhausted. The resolutions by each of the school districts shall state that the services of retired teachers and retired administrators are necessary to address the shortage of qualified and available substitutes. The resolutions shall be valid only for the school year in which they are adopted. The cooperative shall forward a copy of the resolutions with a list of retired teachers and retired administrators who have been employed as substitute teachers to the department and may notify the retired teachers and retired administrators included on the list of their right to take advantage of the provisions of this subsection.

(3) In addition to the seventy-five days of service permitted under subsection (1) of this section, a retired administrator or retired teacher may also serve as a substitute administrator up to an additional fifteen days per school year without reduction of pension if a school district board of directors adopts a resolution declaring that the services of a retired administrator or retired teacher are necessary because it cannot find a replacement administrator to fill a vacancy. The resolution shall be valid only for the school year in which it is adopted. The district shall forward a copy of the resolution with the name of the retired administrator or retired teacher who has been employed as a substitute administrator to the department. However a retired administrator or retired teacher may not serve more than a total of fifteen additional days per school year pursuant to subsections (2) and (3) of this section.

(4) Subsection (1) of this section shall apply to all persons governed by the provisions of plan I, regardless of the date of their retirement, but shall apply only to benefits payable after June 11, 1986.

~~((4))~~ (5) Subsection (2) of this section shall apply to all persons governed by the provisions of plan I, regardless of the date of their retirement, but shall only apply to benefits payable after September 1, 1994.

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, 1995.

Passed the House April 10, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.

CHAPTER 265

[Engrossed Substitute House Bill 1046]

HEALTH CARE REFORM—REVISION AND SIMPLIFICATION

AN ACT Relating to health care reform improvement; amending RCW 48.21.045, 48.44.023, and 48.46.066; adding a new section to chapter 70.47 RCW; adding new sections to chapter 48.43 RCW; adding a new section to chapter 48.20 RCW; adding new sections to chapter 48.44 RCW; adding new sections to chapter 48.46 RCW; adding a new section to chapter 43.70 RCW; adding a new section to chapter 48.21 RCW; adding a new chapter to Title 48 RCW; adding a new chapter to Title 43 RCW; creating new sections; repealing RCW 18.130.320, 18.130.330, 43.72.005, 43.72.010, 43.72.020, 43.72.030, 43.72.040, 43.72.050, 43.72.060, 43.72.070, 43.72.080, 43.72.090, 43.72.100, 43.72.110, 43.72.120, 43.72.130, 43.72.140, 43.72.150, 43.72.160, 43.72.170, 43.72.180, 43.72.190, 43.72.210, 43.72.220, 43.72.225, 43.72.230, 43.72.240, 43.72.300, 43.72.310, 43.72.800, 43.72.810, 43.72.820, 43.72.830, 43.72.840, 43.72.870, 48.01.200, 48.43.010, 48.43.020, 48.43.030, 48.43.040, 48.43.050, 48.43.060, 48.43.070, 48.43.080, 48.43.090, 48.43.100, 48.43.110, 48.43.120, 48.43.130, 70.170.140, 48.43.140, 48.43.150, 48.43.160, 48.43.170, 48.01.210, 48.20.540, 48.21.340, 48.44.480, 48.46.550, 70.170.100, 70.170.110, 70.170.120, 70.170.130, 70.170.140, 48.44.490, 48.46.560, and 43.72.200; 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 70.47 RCW to read as follows:

BASIC HEALTH PLAN—EXPANDED ENROLLMENT. (1) The legislature finds that the basic health plan has been an effective program in providing health coverage for uninsured residents. Further, since 1993, substantial amounts of public funds have been allocated for subsidized basic health plan enrollment.

(2) It is the intent of the legislature that the basic health plan enrollment be expanded expeditiously, consistent with funds available in the health services account, with the goal of two hundred thousand adult subsidized basic health plan enrollees and one hundred thirty thousand children covered through expanded medical assistance services by June 30, 1997, with the priority of providing needed health services to children in conjunction with other public programs.

(3) Effective January 1, 1996, basic health plan enrollees whose income is less than one hundred twenty-five percent of the federal poverty level shall pay at least a ten-dollar premium share.

(4) No later than July 1, 1996, the administrator shall implement procedures whereby hospitals licensed under chapters 70.41 and 71.12 RCW, health carrier, rural health care facilities regulated under chapter 70.175 RCW, and community and migrant health centers funded under RCW 41.05.220, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

(5) No later than July 1, 1996, the administrator shall implement procedures whereby health insurance agents and brokers, licensed under chapter 48.17 RCW, may expeditiously assist patients and their families in applying for basic health

plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. Brokers and agents shall be entitled to receive a commission for each individual sale of the basic health plan to anyone not at anytime previously signed up and a commission for each group sale of the basic health plan. No commission shall be provided upon a renewal. Commissions shall be determined based on the estimated annual cost of the basic health plan, however, commissions shall not result in a reduction in the premium amount paid to health carriers. For purposes of this section "health carrier" is as defined in section 4 of this act. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

NEW SECTION. Sec. 2. HEALTH CARE SAVINGS ACCOUNTS. (1) This chapter shall be known as the health care savings account act.

(2) The legislature recognizes that the costs of health care are increasing rapidly and most individuals are removed from participating in the purchase of their health care.

As a result, it becomes critical to encourage and support solutions to alleviate the demand for diminishing state resources. In response to these increasing costs in health care spending, the legislature intends to clarify that health care savings accounts may be offered as health benefit options to all residents as incentives to reduce unnecessary health services utilization, administration, and paperwork, and to encourage individuals to be in charge of and participate directly in their use of service and health care spending. To alleviate the possible impoverishment of residents requiring long-term care, health care savings accounts may promote savings for long-term care and provide incentives for individuals to protect themselves from financial hardship due to a long-term health care need.

(3) Health care savings accounts are authorized in Washington state as options to employers and residents.

NEW SECTION. Sec. 3. HEALTH CARE SAVINGS ACCOUNTS—REQUEST FOR TAX EXEMPTION. The governor and responsible agencies shall:

(1) Request that the United States congress amend the internal revenue code to treat premiums and contributions to health benefits plans, such as health care savings account programs, basic health plans, conventional and standard health plans offered through a health carrier, by employers, self-employed persons, and individuals, as fully excluded employer expenses and deductible from individual adjusted gross income for federal tax purposes.

(2) Request that the United States congress amend the internal revenue code to exempt from federal income tax interest that accrues in health care savings accounts until such money is withdrawn for expenditures other than eligible health expenses as defined in law.

(3) If all federal statute or regulatory waivers necessary to fully implement this chapter have not been obtained by the effective date of this section, this chapter shall remain in effect.

NEW SECTION. Sec. 4. DEFINITIONS. Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(3) "Eligible employee" means an employee who works on a full-time basis with a normal work week of thirty or more hours. The term includes a self-employed individual, including a sole proprietor, a partner of a partnership, and may include an independent contractor, if the self-employed individual, sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not work less than thirty hours per week and derives at least seventy-five percent of his or her income from a trade or business through which he or she has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form. Persons covered under a health benefit plan pursuant to the consolidated omnibus budget reconciliation act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements of this act.

(4) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(5) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(6) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(7) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(8) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(9) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans; and

(j) Dental only and vision only coverage.

(10) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(11) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(12) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(13) "Small employer" means any person, firm, corporation, partnership, association, political subdivision except school districts, or self-employed individual that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed no more than fifty eligible employees, with a normal work week of thirty or more hours, the majority of whom were employed within this state, and is not formed primarily for purposes of buying health insurance and in which a bona fide employer-

employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. The term "small employer" includes a self-employed individual or sole proprietor. The term "small employer" also includes a self-employed individual or sole proprietor who derives at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate Internal Revenue Service form 1040, Schedule C or F, for the previous taxable year.

(14) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

(15) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

NEW SECTION. Sec. 5. INSURANCE REFORM—PORTABILITY. (1) Every health carrier shall waive any preexisting condition exclusion or limitation for persons or groups who had similar health coverage under a different health plan at any time during the three-month period immediately preceding the date of application for the new health plan if such person was continuously covered under the immediately preceding health plan. If the person was continuously covered for at least three months under the immediately preceding health plan, the carrier may not impose a waiting period for coverage of preexisting conditions. If the person was continuously covered for less than three months under the immediately preceding health plan, the carrier must credit any waiting period under the immediately preceding health plan toward the new health plan. For the purposes of this subsection, a preceding health plan includes an employer provided self-funded health plan.

(2) Subject to the provisions of subsection (1) of this section, nothing contained in this section requires a health carrier to amend a health plan to provide new benefits in its existing health plans. In addition, nothing in this section requires a carrier to waive benefit limitations not related to an individual or group's preexisting conditions or health history.

NEW SECTION. Sec. 6. INSURANCE REFORM—PREEXISTING CONDITIONS. (1) No carrier may reject an individual for health plan coverage

based upon preexisting conditions of the individual and no carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that a carrier may impose a three-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment within three months before the effective date of coverage.

(2) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially discourage applications for coverage from individuals or groups who are higher than average health risks. These provisions apply only to individuals who are Washington residents.

NEW SECTION. Sec. 7. INSURANCE REFORM—GUARANTEED ISSUE. (1) All health carriers shall accept for enrollment any state resident within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The insurance commissioner may grant a temporary exemption from this subsection, if, upon application by a health carrier the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals.

(2) Except as provided in subsection (5) of this section, all health plans shall contain or incorporate by endorsement a guarantee of the continuity of coverage of the plan. For the purposes of this section, a plan is "renewed" when it is continued beyond the earliest date upon which, at the carrier's sole option, the plan could have been terminated for other than nonpayment of premium. In the case of group plans, the carrier may consider the group's anniversary date as the renewal date for purposes of complying with the provisions of this section.

(3) The guarantee of continuity of coverage required in health plans shall not prevent a carrier from canceling or nonrenewing a health plan for:

- (a) Nonpayment of premium;
- (b) Violation of published policies of the carrier approved by the insurance commissioner;
- (c) Covered persons entitled to become eligible for medicare benefits by reason of age who fail to apply for a medicare supplement plan or medicare cost, risk, or other plan offered by the carrier pursuant to federal laws and regulations;
- (d) Covered persons who fail to pay any deductible or copayment amount owed to the carrier and not the provider of health care services;
- (e) Covered persons committing fraudulent acts as to the carrier;
- (f) Covered persons who materially breach the health plan; or
- (g) Change or implementation of federal or state laws that no longer permit the continued offering of such coverage.

(4) The provisions of this section do not apply in the following cases:

(a) A carrier has zero enrollment on a product; or

(b) A carrier replaces a product and the replacement product is provided to all covered persons within that class or line of business, includes all of the services covered under the replaced product, and does not significantly limit access to the kind of services covered under the replaced product. The health plan may also allow unrestricted conversion to a fully comparable product; or

(c) A carrier is withdrawing from a service area or from a segment of its service area because the carrier has demonstrated to the insurance commissioner that the carrier's clinical, financial, or administrative capacity to serve enrollees would be exceeded.

(5) The provisions of this section do not apply to health plans deemed by the insurance commissioner to be unique or limited or have a short-term purpose, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

NEW SECTION. Sec. 8. A new section is added to chapter 48.43 RCW to read as follows:

Every health plan delivered, issued for delivery, or renewed by a health carrier on and after January 1, 1996, shall:

(1) Permit every category of health care provider to provide health services or care for conditions included in the basic health plan services to the extent that:

(a) The provision of such health services or care is within the health care providers' permitted scope of practice; and

(b) The providers agree to abide by standards related to:

(i) Provision, utilization review, and cost containment of health services;

(ii) Management and administrative procedures; and

(iii) Provision of cost-effective and clinically efficacious health services.

(2) Annually report the names and addresses of all officers, directors, or trustees of the health carrier during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals.

NEW SECTION. Sec. 9. WASHINGTON HEALTH CARE POLICY BOARD. (1) There is hereby created the Washington health care policy board. The board shall consist of: (a) Five members appointed by the governor; (b) two members of the senate appointed by the president of the senate, one of whom shall be a member of the minority party; and (c) two members of the house of representatives appointed by the speaker of the house of representatives, one of whom shall be a member of the minority party. One member of the board shall be designated by the governor as chair and shall serve at the pleasure of the governor. All legislative members shall be appointed before the close of each regular or special session during an odd-numbered year.

(2) Of the members appointed by the governor, two shall be appointed to two-year terms and two shall be appointed to three-year terms. Thereafter, members shall be appointed to three-year terms. The chair shall serve at the

pleasure of the governor. Vacancies shall be filled by appointment for the remainder of the unexpired term of the position being vacated. A majority of the voting members shall constitute a quorum.

(3) Members of the board appointed by the governor shall occupy their positions on a full-time basis and are exempt from the provisions of chapter 41.06 RCW. They shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040.

NEW SECTION. Sec. 10. CHAIR—POWERS AND DUTIES. The chair shall be the chief administrative officer and the appointing authority of the board. The chair shall have the authority to employ personnel of the board in accordance with chapter 41.06 RCW and prescribe their duties. The chair may employ up to eight personnel exempt from the provisions of chapter 41.06 RCW. The chair shall also have the following powers and duties:

- (1) Enter into contracts on behalf of the board;
- (2) Accept and expend donations, grants, and other funds received by the board;
- (3) Appoint advisory committees and undertake studies, research, and analysis necessary to support activities of the board.

NEW SECTION. Sec. 11. BOARD—POWERS AND DUTIES. The board shall have the following powers and duties:

(1) Periodically make recommendations to the appropriate committees of the legislature and the governor on issues including, but not limited to the following:

(a) The scope, financing, and delivery of health care benefit plans including access for both the insured and uninsured population;

(b) Long-term care services including the finance and delivery of such services in conjunction with the basic health plan by 1999;

(c) The use of health care savings accounts including their impact on the health of participants and the cost of health insurance;

(d) Rural health care needs;

(e) Whether Washington is experiencing an increase in immigration as a result of health insurance reforms and the availability of subsidized and unsubsidized health care benefits;

(f) The status of medical education and make recommendations regarding steps possible to encourage adequate availability of health care professionals to meet the needs of the state's populations with particular attention to rural areas;

(g) The implementation of community rating and its impacts on the marketplace including costs and access;

(h) The status of quality improvement programs in both the public and private sectors;

(i) Models for billing and claims processing forms, ensuring that these procedures minimize administrative burdens on health care providers, facilities, carriers, and consumers. These standards shall also apply to state-purchased health services where appropriate;

(j) Guidelines to health carriers for utilization management and review, provider selection and termination policies, and coordination of benefits and premiums; and

(k) Study the feasibility of including long-term care services in a medicare supplemental insurance policy offered according to RCW 41.05.197;

(2) Review rules prepared by the insurance commissioner, health care authority, department of social and health services, department of labor and industries, and department of health, and make recommendations where appropriate to facilitate consistency with the goals of health reform;

(3) Make recommendations on a system for managing health care services to children with special needs and report to the governor and the legislature on their findings by January 1, 1997;

(4) Conduct a comparative analysis of individual and group insurance markets addressing: Relative costs; utilization rates; adverse selection; and specific impacts upon small businesses and individuals. The analysis shall address, also, the necessity and feasibility of establishing explicit related policies, to include, but not be limited to, establishing the maximum allowable individual premium rate as a percentage of the small group premium rate. The board shall submit an interim report on its findings to the governor and appropriate committees of the legislature by December 15, 1995, and a final report on December 15, 1996;

(5) Develop sample enrollee satisfaction surveys that may be used by health carriers.

NEW SECTION. Sec. 12. STUDY. In January 1999 the legislative budget committee shall commence a study of the necessity of the existence of the board and report its recommendations to the appropriate committees of the legislature by December 1, 1999.

NEW SECTION. Sec. 13. A new section is added to chapter 48.20 RCW to read as follows:

(1)(a) An insurer offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude an insurer from offering, or an individual from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. An insurer offering a health benefit plan that does not include benefits provided in the basic health plan shall clearly disclose these differences to the individual in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.20.390, 48.20.393, 48.20.395, 48.20.397, 48.20.410, 48.20.411, 48.20.412, 48.20.416, and 48.20.420 if the

health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan.

(2) Premiums for health benefit plans for individuals shall be calculated using the adjusted community rating method that spreads financial risk across the carrier's entire individual product population. All such rates shall conform to the following:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in section 5 of this act.

(3) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.21.045.

(4) As used in this section, "health benefit plan," "basic health plan," "adjusted community rate," and "wellness activities" mean the same as defined in section 4 of this act.

Sec. 14. RCW 48.21.045 and 1990 c 187 s 2 are each amended to read as follows:

~~((A basic group disability insurance policy may be offered to employers of fewer than twenty-five employees. Such a basic group disability insurance policy))~~ (1)(a) An insurer offering any health benefit plan to a small employer shall offer and actively market to the small employer a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude an insurer from offering, or a small employer from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. An insurer offering a health benefit plan that does not include benefits in the basic health plan shall clearly disclose these differences to the small employer in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, 48.21.240, 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320 if: (i) The health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan; or (ii) the health benefit plan is offered to employers with not more than twenty-five employees.

(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, benefits in excess of the basic ((coverage authorized herein)) health plan services. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in section 5 of this act.

(i) Adjusted community rates established under this section shall pool the medical experience of all small groups purchasing coverage.

(4) The ((policy)) health benefit plans authorized by this section that are lower than the required offering shall not supplant or supersede any existing policy for the benefit of employees in this state. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by an insurer in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) An insurer shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) An insurer may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) An insurer must offer coverage to all eligible employees of a small employer and their dependents. An insurer may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. An insurer may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(7) As used in this section, "health benefit plan," "small employer," "basic health plan," "adjusted community rate," and "wellness activities" mean the same as defined in section 4 of this act.

NEW SECTION. Sec. 15. A new section is added to chapter 48.44 RCW to read as follows:

(1)(a) A health care service contractor offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude a contractor from offering, or an individual from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A contractor offering a health benefit plan that does not include benefits provided in the basic health plan shall clearly disclose these differences to the individual in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.340, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460 if the health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan.

(2) Premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health care service contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;

- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health care service contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in section 5 of this act.

(3) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.44.023.

(4) As used in this section and RCW 48.44.023 "health benefit plan," "small employer," "basic health plan," "adjusted community rates," and "wellness activities" mean the same as defined in section 4 of this act.

Sec. 16. RCW 48.44.023 and 1990 c 187 s 3 are each amended to read as follows:

~~(A basic health care service contract may be offered to employers of fewer than twenty-five employees. Such a basic health care service contract)) (1)(a)~~
A health care services contractor offering any health benefit plan to a small employer shall offer and actively market to the small employer a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan.

Nothing in this subsection shall preclude a contractor from offering, or a small employer from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A contractor offering a health benefit plan that does not include benefits in the basic health plan shall clearly disclose these differences to the small employer in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.340, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460 if (i) The health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan; or (ii) the health benefit plan is offered to employers with not more than twenty-five employees.

(2) Nothing in this section shall prohibit (~~an insurer~~) a health care service contractor from offering, or a purchaser from seeking, benefits in excess of the basic (~~coverage authorized herein~~) health plan services. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in section 5 of this act.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage.

(4) The ((policy)) health benefit plans authorized by this section that are lower than the required offering shall not supplant or supersede any existing policy for the benefit of employees in this state. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a contractor in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A contractor shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A contractor may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) A contractor must offer coverage to all eligible employees of a small employer and their dependents. A contractor may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A contractor may not modify a health plan with respect to a small

employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

NEW SECTION. Sec. 17. A new section is added to chapter 48.46 RCW to read as follows:

(1)(a) A health maintenance organization offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude a health maintenance organization from offering, or an individual from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A health maintenance organization offering a health benefit plan that does not include benefits provided in the basic health plan shall clearly disclose these differences to the individual in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.26.280, 48.46.285, 48.46.290, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530 if the health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan.

(2) Premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in section 5 of this act.

(3) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.46.066.

(4) As used in this section and RCW 48.46.066, "health benefit plan," "basic health plan," "adjusted community rate," "small employer," and "wellness activities" mean the same as defined in section 4 of this act.

Sec. 18. RCW 48.46.066 and 1990 c 187 s 4 are each amended to read as follows:

~~((A basic health maintenance agreement may be offered to employers of fewer than twenty-five employees. Such a basic health maintenance agreement))~~

(1)(a) A health maintenance organization offering any health benefit plan to a small employer shall offer and actively market to the small employer a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude a health maintenance organization from offering, or a small employer from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A health maintenance organization offering a health benefit plan that does not include benefits in the basic health plan shall clearly disclose these differences to the small employer in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, 48.46.290, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530 if: (i) The health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan; or

(ii) the health benefit plan is offered to employers with not more than twenty-five employees.

(2) Nothing in this section shall prohibit ((an insurer)) a health maintenance organization from offering, or a purchaser from seeking, benefits in excess of the basic ((coverage authorized herein)) health plan services. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

(i) Geographic area;

(ii) Family size;

(iii) Age; and

(iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health

benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in section 5 of this act.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage.

(4) The ((policy)) health benefit plans authorized by this section that are lower than the required offering shall not supplant or supersede any existing policy for the benefit of employees in this state. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a health maintenance organization in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A health maintenance organization shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A health maintenance organization may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) A health maintenance organization must offer coverage to all eligible employees of a small employer and their dependents. A health maintenance organization may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A health maintenance organization may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

NEW SECTION. Sec. 19. A new section is added to chapter 43.70 RCW to read as follows:

(1) The identity of a whistleblower who complains, in good faith, to the department of health about the improper quality of care by a health care provider, or in a health care facility, as defined in RCW 43.72.010, shall remain confidential. The provisions of RCW 4.24.500 through 4.24.520, providing certain protections to persons who communicate to government agencies, shall

apply to complaints filed under this section. The identity of the whistleblower shall remain confidential unless the department determines that the complaint was not made in good faith. An employee who is a whistleblower, as defined in this section, and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action has the remedies provided under chapter 49.60 RCW.

(2)(a) "Improper quality of care" means any practice, procedure, action, or failure to act that violates any state law or rule of the applicable state health licensing authority under Title 18 or chapters 70.41, 70.96A, 70.127, 70.175, 71.05, 71.12, and 71.24 RCW, and enforced by the department of health. Each health disciplinary authority as defined in RCW 18.130.040 may, with consultation and interdisciplinary coordination provided by the state department of health, adopt rules defining accepted standards of practice for their profession that shall further define improper quality of care. Improper quality of care shall not include good faith personnel actions related to employee performance or actions taken according to established terms and conditions of employment.

(b) "Reprisal or retaliatory action" means but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct pursuant to Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion; suspension; dismissal; denial of employment; and a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower.

(c) "Whistleblower" means a consumer, employee, or health care professional who in good faith reports alleged quality of care concerns to the department of health.

(3) Nothing in this section prohibits a health care facility from making any decision exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(4) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under Title 18 RCW for health professionals or health care facilities.

NEW SECTION. Sec. 20. A new section is added to chapter 48.43 RCW to read as follows:

Each health carrier as defined under section 4 of this act shall file with the commissioner its procedures for review and adjudication of complaints initiated by covered persons or health care providers. Procedures filed under this section shall provide a fair review for consideration of complaints. Every health carrier shall provide reasonable means whereby any person aggrieved by actions of the health carrier may be heard in person or by their authorized representative on their written request for review. If the health carrier fails to grant or reject such request within thirty days after it is made, the complaining person may proceed

as if the complaint had been rejected. A complaint that has been rejected by the health carrier may be submitted to nonbinding mediation. Mediation shall be conducted pursuant to mediation rules similar to those of the American arbitration association, the center for public resources, the judicial arbitration and mediation service, RCW 7.70.100, or any other rules of mediation agreed to by the parties.

NEW SECTION. Sec. 21. The health care authority, the office of financial management, and the department of social and health services shall together monitor the enrollee level in the basic health plan and the medicaid caseload of children funded from the health services account. The office of financial management shall adjust the funding levels by interagency reimbursement of funds between the basic health plan and medicaid and adjust the funding levels between the health care authority and the medical assistance administration of the department of social and health services to maximize combined enrollment.

NEW SECTION. Sec. 22. A new section is added to chapter 48.21 RCW to read as follows:

(1) No insurer shall offer any health benefit plan to any small employer without complying with the provisions of RCW 48.21.045(5).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care shall not be considered small employers and such plans shall not be subject to the provisions of RCW 48.21.045(5).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in section 4 of this act.

NEW SECTION. Sec. 23. A new section is added to chapter 48.44 RCW to read as follows:

(1) No health care service contractor shall offer any health benefit plan to any small employer without complying with the provisions of RCW 48.44.023(5).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care shall not be considered small employers and such plans shall not be subject to the provisions of RCW 48.44.023(5).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in section 4 of this act.

NEW SECTION. Sec. 24. A new section is added to chapter 48.46 RCW to read as follows:

(1) No health maintenance organization shall offer any health benefit plan to any small employer without complying with the provisions of RCW 48.46.066(5).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of

purchasing health care shall not be considered small employers and such plans shall not be subject to the provisions of RCW 48.46.066(5).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in section 4 of this act.

NEW SECTION. Sec. 25. (1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with plans containing the basic health plan services to receive the full range of services covered under the plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan services. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The insurance commissioner shall establish by rule a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The insurance commissioner shall define by rule the process through which health carriers may offer the basic health plan services to individuals and organizations identified in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires a health carrier, health care facility, or health care provider to provide any health care services without appropriate payment of premium or fee.

NEW SECTION. Sec. 26. The department of social and health services, in consultation with the health care authority, the office of financial management, and other appropriate state agencies, shall seek necessary federal waivers and state law changes to the medical assistance program of the department to achieve greater coordination in financing, purchasing, and delivering health services to low-income residents of Washington state in a cost-effective manner, and to expand access to care for these low-income residents. Such waivers shall include any waiver needed to require that point-of-service cost-sharing, based on recipient household income, be applied to medical assistance recipients. In negotiating the waiver, consideration shall be given to the degree to which benefits in addition to the minimum list of services should be offered to medical assistance recipients.

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

- (1) RCW 18.130.320 and 1993 c 492 s 408;
- (2) RCW 18.130.330 and 1994 c 102 s 1 & 1993 c 492 s 412;
- (3) RCW 43.72.005 and 1993 c 492 s 401;
- (4) RCW 43.72.010 and 1994 c 4 s 1, 1993 c 494 s 1, & 1993 c 492 s 402;
- (5) RCW 43.72.020 and 1994 c 154 s 311 & 1993 c 492 s 403;
- (6) RCW 43.72.030 and 1993 c 492 s 405;
- (7) RCW 43.72.040 and 1994 c 4 s 3, 1993 c 494 s 2, & 1993 c 492 s 406;
- (8) RCW 43.72.050 and 1993 c 492 s 407;
- (9) RCW 43.72.060 and 1994 c 4 s 2 & 1993 c 492 s 404;
- (10) RCW 43.72.070 and 1993 c 492 s 409;
- (11) RCW 43.72.080 and 1993 c 492 s 425;
- (12) RCW 43.72.090 and 1993 c 492 s 427;
- (13) RCW 43.72.100 and 1993 c 492 s 428;
- (14) RCW 43.72.110 and 1993 c 492 s 429;
- (15) RCW 43.72.120 and 1993 c 492 s 430;
- (16) RCW 43.72.130 and 1993 c 492 s 449;
- (17) RCW 43.72.140 and 1993 c 492 s 450;
- (18) RCW 43.72.150 and 1993 c 492 s 451;
- (19) RCW 43.72.160 and 1993 c 492 s 452;
- (20) RCW 43.72.170 and 1993 c 492 s 453;
- (21) RCW 43.72.180 and 1993 c 492 s 454;
- (22) RCW 43.72.190 and 1993 c 492 s 455;
- (23) RCW 43.72.210 and 1993 c 492 s 463;
- (24) RCW 43.72.220 and 1993 c 494 s 3 & 1993 c 492 s 464;
- (25) RCW 43.72.225 and 1994 c 4 s 4;
- (26) RCW 43.72.230 and 1993 c 492 s 465;

- (27) RCW 43.72.240 and 1993 c 494 s 4 & 1993 c 492 s 466;
- (28) RCW 43.72.300 and 1993 c 492 s 447;
- (29) RCW 43.72.310 and 1993 c 492 s 448;
- (30) RCW 43.72.800 and 1993 c 492 s 457;
- (31) RCW 43.72.810 and 1993 c 492 s 474;
- (32) RCW 43.72.820 and 1993 c 492 s 475;
- (33) RCW 43.72.830 and 1993 c 492 s 476;
- (34) RCW 43.72.840 and 1993 c 492 s 478;
- (35) RCW 43.72.870 and 1993 c 494 s 5;
- (36) RCW 48.01.200 and 1993 c 492 s 294;
- (37) RCW 48.43.010 and 1993 c 492 s 432;
- (38) RCW 48.43.020 and 1993 c 492 s 433;
- (39) RCW 48.43.030 and 1993 c 492 s 434;
- (40) RCW 48.43.040 and 1993 c 492 s 435;
- (41) RCW 48.43.050 and 1993 c 492 s 436;
- (42) RCW 48.43.060 and 1993 c 492 s 437;
- (43) RCW 48.43.070 and 1993 c 492 s 438;
- (44) RCW 48.43.080 and 1993 c 492 s 439;
- (45) RCW 48.43.090 and 1993 c 492 s 440;
- (46) RCW 48.43.100 and 1993 c 492 s 441;
- (47) RCW 48.43.110 and 1993 c 492 s 442;
- (48) RCW 48.43.120 and 1993 c 492 s 443;
- (49) RCW 48.43.130 and 1993 c 492 s 444;
- (50) RCW 48.43.140 and 1993 c 492 s 445;
- (51) RCW 48.43.150 and 1993 c 492 s 446;
- (52) RCW 48.43.160 and 1993 c 492 s 426;
- (53) RCW 48.43.170 and 1993 c 492 s 431;
- (54) RCW 48.01.210 and 1993 c 462 s 51;
- (55) RCW 48.20.540 and 1993 c 492 s 283;
- (56) RCW 48.21.340 and 1993 c 492 s 284;
- (57) RCW 48.44.480 and 1993 c 492 s 285;
- (58) RCW 48.46.550 and 1993 c 492 s 286;
- (59) RCW 70.170.100 and 1993 c 492 s 259, 1990 c 269 s 12, & 1989 1st ex.s. c 9 s 510;
- (60) RCW 70.170.110 and 1993 c 492 s 260 & 1989 1st ex.s. c 9 s 511;
- (61) RCW 70.170.120 and 1993 c 492 s 261;
- (62) RCW 70.170.130 and 1993 c 492 s 262;
- (63) RCW 70.170.140 and 1993 c 492 s 263;
- (64) RCW 48.44.490 and 1993 c 492 s 288;
- (65) RCW 48.46.560 and 1993 c 492 s 289; and
- (66) RCW 43.72.200 and 1993 c 492 s 456.

NEW SECTION. Sec. 28. CODIFICATION DIRECTION. (1) Sections 2 and 3 of this act shall constitute a new chapter in Title 48 RCW.

(2) Sections 4 through 7 and 25 of this act are each added to chapter 48.43 RCW.

(3) Sections 9 through 12 of this act shall constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec. 29. CAPTIONS NOT LAW.** Captions as used in this act constitute no part of the law.

NEW SECTION. **Sec. 30. EFFECTIVE DATE.** 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, 1995, except that sections 13 through 18 of this act shall take effect January 1, 1996.

NEW SECTION. **Sec. 31. SAVINGS CLAUSE.** This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections.

NEW SECTION. **Sec. 32. 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.

Passed the House April 17, 1995.

Passed the Senate April 14, 1995.

Approved by the Governor May 8, 1995.

Filed in Office of Secretary of State May 8, 1995.

CHAPTER 266

[Engrossed Substitute Senate Bill 5386]

BASIC HEALTH PLAN EXPANSION

AN ACT Relating to the basic health plan; amending RCW 70.47.060 and 70.47.020; adding a new section to chapter 70.47 RCW; repealing RCW 70.47.065; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 70.47.060 and 1994 c 309 s 5 are each amended to read as follows:

The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care (~~(-which)~~). In addition, the administrator may offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic

health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for groups of subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.42.080, and such other factors as the administrator deems appropriate. ~~((On and after July 1, 1995, the uniform benefits package adopted and from time to time revised by the Washington health services commission pursuant to RCW 43.72.130 shall be implemented by the administrator as the schedule of covered basic health care services.))~~

However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that the services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (9) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (10) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator, but in no case shall the payment made on behalf of the enrollee exceed the total premiums due from the enrollee.

(d) To develop, as an offering by all health carriers providing coverage identical to the basic health plan, a model plan benefits package with uniformity in enrollee cost-sharing requirements.

(3) To design and implement a structure of ~~((copayments))~~ enrollee cost sharing due a managed health care system from subsidized and nonsubsidized enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services. ~~((On and after July 1, 1995, the administrator shall endeavor to make the copayments structure of the plan consistent with enrollee point of service cost sharing levels adopted by the Washington health services commission, giving consideration to funding available to the plan.))~~

(4) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(5) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing

providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(8) To receive periodic premiums from or on behalf of subsidized and nonsubsidized enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized or nonsubsidized enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and ~~((at least semiannually thereafter))~~ on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If, as a result of an eligibility review, the administrator determines that a subsidized enrollee's income exceeds twice the federal poverty level and that the enrollee knowingly failed to inform the plan of such increase in income, the administrator may bill the enrollee for the subsidy paid on the enrollee's behalf during the period of time that the enrollee's income exceeded twice the federal poverty level. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to re-enroll in the plan.

(10) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator ~~((shall))~~ may require that a business owner pay at least ~~((fifty percent of the nonsubsidized))~~ an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

Sec. 2. RCW 70.47.020 and 1994 c 309 s 4 are each amended to read as follows:

As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment on a prepaid capitated basis for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, on a prepaid capitated basis to a defined patient population enrolled in the plan and in the managed health care system.

~~((On and after July 1, 1995, "managed health care system" means a certified health plan, as defined in RCW 43.72.010.))~~

(4) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children, not eligible for medicare, who resides in an area of the state served by a managed health care system participating in the plan, whose gross family income at the time of enrollment does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, ~~((who the administrator determines shall not have, or shall not have voluntarily relinquished health insurance more comprehensive than that offered by the plan as of the effective date of enrollment,))~~ and who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan.

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children, not eligible for medicare, who resides in an area of the state served by a managed health care system participating in the plan, ~~((who the administrator determines shall not have, or shall not have voluntarily relinquished health insurance more comprehensive than that offered by the plan as of the effective date of enrollment,))~~ and who chooses to obtain basic health care coverage from a particular managed health care system, and who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(7) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee or a nonsubsidized enrollee.

(8) "Rate" means the per capita amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized and nonsubsidized enrollees in the plan and in that system.

NEW SECTION. Sec. 3. A new section is added to chapter 70.47 RCW to read as follows:

(1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with the basic health plan to receive the full range of services covered under the basic health plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The administrator shall establish a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The administrator shall define the process through which health carriers may offer the basic health plan to individuals and organizations identified in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires the health care authority, health carriers, health care facilities, or health care providers to provide any basic health plan service without payment of appropriate premium share or enrollee cost sharing.

NEW SECTION. Sec. 4. RCW 70.47.065 and 1993 c 494 s 6 are each repealed.

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, 1995.

Passed the Senate April 21, 1995.

Passed the House April 18, 1995.

Approved by the Governor May 8, 1995.

Filed in Office of Secretary of State May 8, 1995.

CHAPTER 267

[Engrossed Substitute House Bill 1589]

HEALTH CARE QUALITY ASSURANCE

AN ACT Relating to quality assurance; amending RCW 43.70.510 and 43.72.310; amending 1995 c . . . (ES11B 1046) s 27 (uncodified); reenacting and amending RCW 42.17.310; adding new sections to chapter 43.70 RCW; adding a new section to chapter 43.72 RCW; creating new sections; repealing RCW 70.170.100, 70.170.110, 70.170.120, 70.170.130, 70.170.140, 43.72.070, and 70.170.080; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec. I. HOSPITAL DISCHARGE DATA—OTHER DATA REQUIREMENTS.** (1) To promote the public interest consistent with the purposes of chapter 492, Laws of 1993 as amended by chapter . . . , Laws of 1995 (this act), the department shall continue to require hospitals to submit hospital financial and patient discharge information, which shall be collected, maintained, analyzed, and disseminated by the department. The department shall, if deemed cost-effective and efficient, contract with a private entity for any or all parts of data collection. Data elements shall be reported in conformance with a uniform reporting system established by the department. This includes data elements identifying each hospital's revenues, expenses, contractual allowances, charity care, bad debt, other income, total units of inpatient and outpatient services, and other financial information reasonably necessary to fulfill the purposes of this section. Data elements relating to use of hospital services by patients shall be the same as those currently compiled by hospitals through inpatient discharge abstracts. The department shall encourage and permit reporting by electronic transmission or hard copy as is practical and economical to reporters.

(2) In identifying financial reporting requirements, the department may require both annual reports and condensed quarterly reports from hospitals, so as to achieve both accuracy and timeliness in reporting, but shall craft such requirements with due regard of the data reporting burdens of hospitals.

(3) The health care data collected, maintained, and studied by the department shall only be available for retrieval in original or processed form to public and private requestors and shall be available within a reasonable period of time after the date of request. The cost of retrieving data for state officials and agencies shall be funded through the state general appropriation. The cost of retrieving data for individuals and organizations engaged in research or private use of data or studies shall be funded by a fee schedule developed by the department that reflects the direct cost of retrieving the data or study in the requested form.

(4) The department shall, in consultation and collaboration with the federally recognized tribes, urban or other Indian health service organizations, and the federal area Indian health service, design, develop, and maintain an American Indian-specific health data, statistics information system. The department rules regarding confidentiality shall apply to safeguard the information from inappropriate use or release.

(5) All persons subject to the data collection requirements of this section shall comply with departmental requirements established by rule in the acquisition of data.

NEW SECTION. **Sec. 2. DATA STANDARDS.** (1) To promote the public interest consistent with this act, the department of health, in cooperation with the health care policy board and the information services board established under RCW 43.105.032, shall develop health care data standards to be used by, and developed in collaboration with, consumers, purchasers, health carriers, providers, and state government as consistent with the intent of chapter 492, Laws of 1993 as amended by chapter . . . , Laws of 1995 (this act), to promote the delivery of quality health services that improve health outcomes for state residents. The data standards shall include content, coding, confidentiality, and transmission standards for all health care data elements necessary to support the intent of this section, and to improve administrative efficiency and reduce cost. Purchasers, as allowed by federal law, health carriers, health facilities and providers as defined in chapter 48.43 RCW, and state government shall utilize the data standards. The information and data elements shall be reported as the department of health directs by rule in accordance with data standards developed under this section.

(2) The health care data collected, maintained, and studied by the department under this section, the health care policy board, or any other entity: (a) Shall include a method of associating all information on health care costs and services with discrete cases; (b) shall not contain any means of determining the personal identity of any enrollee, provider, or facility; (c) shall only be available for retrieval in original or processed form to public and private requesters; (d) shall be available within a reasonable period of time after the date of request; and (e) shall give strong consideration to data standards that achieve national uniformity.

(3) The cost of retrieving data for state officials and agencies shall be funded through state general appropriation. The cost of retrieving data for individuals and organizations engaged in research or private use of data or studies shall be funded by a fee schedule developed by the department that reflects the direct cost of retrieving the data or study in the requested form.

(4) All persons subject to this section shall comply with departmental requirements established by rule in the acquisition of data, however, the department shall adopt no rule or effect no policy implementing the provisions of this section without an act of law.

(5) The department shall submit developed health care data standards to the appropriate committees of the legislature by December 31, 1995.

NEW SECTION. **Sec. 3. HEALTH CARE QUALITY—FINDINGS AND INTENT.** The legislature finds that it is difficult for consumers of health care services to determine the quality of health care prior to purchase or utilization of medical care. The legislature also finds that accountability is a key component in promoting quality assurance and quality improvement throughout

the health care delivery system, including public programs. Quality assurance and improvement standards are necessary to promote the public interest, contribute to cost efficiencies, and improve the ability of consumers to ascertain quality health care purchases.

The legislature intends to have consumers, health carriers, health care providers and facilities, and public agencies participate in the development of quality assurance and improvement standards that can be used to develop a uniform quality assurance program for use by all public and private health plans, providers, and facilities. To that end, in conducting the study required under section 4 of this act, the department of health shall:

(1) Consider the needs of consumers, employers, health care providers and facilities, and public and private health plans;

(2) Take full advantage of existing national standards of quality assurance to extend to middle-income populations the protections required for state management of health programs for low-income populations;

(3) Consider the appropriate minimum level of quality assurance standards that should be disclosed to consumers and employers by health care providers and facilities, and public and private health plans; and

(4) Consider standards that permit health care providers and facilities to share responsibility for participation in a uniform quality assurance program.

NEW SECTION. Sec. 4. UNIFORM QUALITY ASSURANCE. (1) The department of health in consultation with the health policy board shall study the feasibility of a uniform quality assurance and improvement program for use by all public and private health plans and health care providers and facilities. In this study, the department shall consult with:

(a) Public and private purchasers of health care services;

(b) Health carriers;

(c) Health care providers and facilities; and

(d) Consumers of health services.

(2) In conducting the study, the department shall propose standards that meet the needs of affected persons and organizations, whether public or private, without creation of differing levels of quality assurance. All consumers of health services should be afforded the same level of quality assurance.

(3) At a minimum, the study shall include but not be limited to the following program components and indicators appropriate for consumer disclosure:

(a) Health care provider training, credentialing, and licensure standards;

(b) Health care facility credentialing and recredentialing;

(c) Staff ratios in health care facilities;

(d) Annual mortality and morbidity rates of cases based on a defined set of procedures performed or diagnoses treated in health care facilities, adjusted to fairly consider variable factors such as patient demographics and case severity;

(e) The average total cost and average length of hospital stay for a defined set of procedures and diagnoses;

(f) The total number of the defined set of procedures, by specialty, performed by each physician at a health care facility within the previous twelve months;

(g) Utilization performance profiles by provider, both primary care and specialty care, that have been adjusted to fairly consider variable factors such as patient demographics and severity of case;

(h) Health plan fiscal performance standards;

(i) Health care provider and facility recordkeeping and reporting standards;

(j) Health care utilization management that monitors trends in health service under-utilization, as well as over-utilization of services;

(k) Health monitoring that is responsive to consumer, purchaser, and public health assessment needs; and

(l) Assessment of consumer satisfaction and disclosure of consumer survey results.

(4) In conducting the study, the department shall develop standards that permit each health care facility, provider group, or health carrier to assume responsibility for and determine the physical method of collection, storage, and assimilation of quality indicators for consumer disclosure. The study may define the forms, frequency, and posting requirements for disclosure of information.

In developing proposed standards under this subsection, the department shall identify options that would minimize provider burden and administrative cost resulting from duplicative private sector data submission requirements.

(5) The department shall submit a preliminary report to the legislature by December 31, 1995, including recommendations for initial legislation pursuant to subsection (6) of this section, and shall submit supplementary reports and recommendations as completed, consistent with appropriated funds and staffing.

(6) The department shall not adopt any rule implementing the uniform quality assurance program or consumer disclosure provisions unless expressly directed to do so by an act of law.

NEW SECTION. Sec. 5. QUALITY ASSURANCE—INTERAGENCY COOPERATION—ELIMINATION AND COORDINATION OF DUPLICATE STATE PROGRAMS. No later than July 1, 1995, the health care policy board together with the department of health, the health care authority, the department of social and health services, the office of the insurance commissioner, and the department of labor and industries shall form an interagency group for coordination and consultation on quality assurance activities and collaboration on final recommendations for the study required under section 4 of this act. By December 31, 1996, the group shall review all state agency programs governing health service quality assurance, in light of legislative actions pursuant to section 4(6) of this act, and shall recommend to the legislature, the consolidation, coordination, or elimination of rules and programs that would be made unnecessary pursuant to the development of a uniform quality assurance and improvement program.

Sec. 6. RCW 42.17.310 and 1994 c 233 s 2 and 1994 c 182 s 1 are each reenacted and amended to read as follows:

RECORDS EXEMPT FROM PUBLIC INSPECTION—MODIFIED. (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 (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 or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(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.

(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.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(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.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510, regardless of which agency is in possession of the information and documents.

(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. 7. RCW 43.70.510 and 1993 c 492 s 417 are each amended to read as follows:

QUALITY IMPROVEMENT PROGRAMS—ADDING CERTAIN STATE AGENCIES AND HEALTH CARRIERS. (1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, ~~((and certified))~~ health care service contractors, health maintenance organizations, health ((plans)) carriers approved pursuant to ((RCW 43.72.100)) chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, ~~((or certified))~~ health care service contractors, health maintenance organizations, health ((plan)) carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a)

is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.17.310(1)(hh) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of ten or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. All such programs shall comply with the requirements of RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement

program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or ((e)) (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by a quality improvement committee are exempt from disclosure under chapter 42.17 RCW.

(6) The department of health shall adopt rules as are necessary to implement this section.

Sec. 8. RCW 43.72.310 and 1993 c 492 s 448 are each amended to read as follows:

(1) Until the effective date of this section and after June 30, 1996, a certified health plan, health care facility, health care provider, or other person involved in the development, delivery, or marketing of health care or certified health plans may request, in writing, that the commission obtain an informal opinion from the attorney general as to whether particular conduct is authorized by chapter 492, Laws of 1993. Trade secret or proprietary information contained in a request for informal opinion shall be identified as such and shall not be disclosed other than to an authorized employee of the commission or attorney general without the consent of the party making the request, except that information in summary or aggregate form and market share data may be contained in the informal opinion issued by the attorney general. The attorney general shall issue such opinion within thirty days of receipt of a written request for an opinion or within thirty days of receipt of any additional information requested by the attorney general necessary for rendering an opinion unless extended by the attorney general for good cause shown. If the attorney general concludes that such conduct is not authorized by chapter 492, Laws of 1993, the person or organization making the request may petition the commission for review and approval of such conduct in accordance with subsection (3) of this section.

(2) After obtaining the written opinion of the attorney general and consistent with such opinion, the health services commission:

(a) May authorize conduct by a certified health plan, health care facility, health care provider, or any other person that could tend to lessen competition in the relevant market upon a strong showing that the conduct is likely to achieve the policy goals of chapter 492, Laws of 1993 and a more competitive alternative is impractical;

(b) Shall adopt rules governing conduct among providers, health care facilities, and certified health plans including rules governing provider and facility contracts with certified health plans, rules governing the use of "most

favored nation" clauses and exclusive dealing clauses in such contracts, and rules providing that certified health plans in rural areas contract with a sufficient number and type of health care providers and facilities to ensure consumer access to local health care services;

(c) Shall adopt rules permitting health care providers within the service area of a plan to collectively negotiate the terms and conditions of contracts with a certified health plan including the ability of providers to meet and communicate for the purposes of these negotiations; and

(d) Shall adopt rules governing cooperative activities among health care facilities and providers.

(3) Until the effective date of this section and after June 30, 1996, a certified health plan, health care facility, health care provider, or any other person involved in the development, delivery, and marketing of health services or certified health plans may file a written petition with the commission requesting approval of conduct that could tend to lessen competition in the relevant market. Such petition shall be filed in a form and manner prescribed by rule of the commission.

The commission shall issue a written decision approving or denying a petition filed under this section within ninety days of receipt of a properly completed written petition unless extended by the commission for good cause shown. The decision shall set forth findings as to benefits and disadvantages and conclusions as to whether the benefits outweigh the disadvantages.

(4) In authorizing conduct and adopting rules of conduct under this section, the commission with the advice of the attorney general, shall consider the benefits of such conduct in furthering the goals of health care reform including but not limited to:

- (a) Enhancement of the quality of health services to consumers;
- (b) Gains in cost efficiency of health services;
- (c) Improvements in utilization of health services and equipment;
- (d) Avoidance of duplication of health services resources; or
- (e) And as to (h) and (c) of this subsection: (i) Facilitates the exchange of information relating to performance expectations; (ii) simplifies the negotiation of delivery arrangements and relationships; and (iii) reduces the transactions costs on the part of certified health plans and providers in negotiating more cost-effective delivery arrangements.

These benefits must outweigh disadvantages including and not limited to:

- (i) Reduced competition among certified health plans, health care providers, or health care facilities;
- (ii) Adverse impact on quality, availability, or price of health care services to consumers; or
- (iii) The availability of arrangements less restrictive to competition that achieve the same benefits.

(5) Conduct authorized by the commission shall be deemed taken pursuant to state statute and in the furtherance of the public purposes of the state of Washington.

(6) With the assistance of the attorney general's office, the commission shall actively supervise any conduct authorized under this section to determine whether such conduct or rules permitting certain conduct should be continued and whether a more competitive alternative is practical. The commission shall periodically review petitioned conduct through, at least, annual progress reports from petitioners, annual or more frequent reviews by the commission that evaluate whether the conduct is consistent with the petition, and whether the benefits continue to outweigh any disadvantages. If the commission determines that the likely benefits of any conduct approved through rule, petition, or otherwise by the commission no longer outweigh the disadvantages attributable to potential reduction in competition, the commission shall order a modification or discontinuance of such conduct. Conduct ordered discontinued by the commission shall no longer be deemed to be taken pursuant to state statute and in the furtherance of the public purposes of the state of Washington.

(7) Nothing contained in chapter 492, Laws of 1993 is intended to in any way limit the ability of rural hospital districts to enter into cooperative agreements and contracts pursuant to RCW 70.44.450 and chapter 39.34 RCW.

(8) Only requests for informal opinions under subsection (1) of this section and petitions under subsection (3) of this section that were received prior to the effective date of this section or after June 30, 1996, shall be considered.

NEW SECTION. Sec. 9. The office of the attorney general shall study the impact on competition and efficiency of antitrust immunities for health care providers and facilities in Washington that exceed those provided under federal law and shall report to the legislature by December 15, 1995. The study and report shall include a summary of how other states have allowed for greater coordination and consolidation of health care services without such additional immunities.

NEW SECTION. Sec. 10. A new section is added to chapter 43.72 RCW to read as follows:

(1) Effective July 1, 1995, except as provided in subsection (2) of this section, the duties of the health services commission under RCW 43.72.310 shall be carried out by the health care policy board established in section 9, chapter . . . (ESHB 1046), Laws of 1995.

(2) For purposes of the transfer of duties under this section to the health care policy board, legislative members are not appointed to the board and are not members of the board.

Sec. 11. 1995 c . . . (ESHB 1046) s 27 (uncodified) is amended to read as follows:

The following acts or parts of acts are each repealed:

(1) RCW 18.130.320 and 1993 c 492 s 408;

- (2) RCW 18.130.330 and 1994 c 102 s 1 & 1993 c 492 s 412;
 (3) RCW 43.72.005 and 1993 c 492 s 401;
 (4) RCW 43.72.010 and 1994 c 4 s 1, 1993 c 494 s 1, & 1993 c 492 s 402;
 (5) RCW 43.72.020 and 1994 c 154 s 311 & 1993 c 492 s 403;
 (6) RCW 43.72.030 and 1993 c 492 s 405;
 (7) RCW 43.72.040 and 1994 c 4 s 3, 1993 c 494 s 2, & 1993 c 492 s 406;
 (8) RCW 43.72.050 and 1993 c 492 s 407;
 (9) RCW 43.72.060 and 1994 c 4 s 2 & 1993 c 492 s 404;
 (10) RCW 43.72.070 and 1993 c 492 s 409;
 (11) RCW 43.72.080 and 1993 c 492 s 425;
 (12) RCW 43.72.090 and 1995 c 2 s 1 & 1993 c 492 s 427;
 (13) RCW 43.72.100 and 1993 c 492 s 428;
 (14) RCW 43.72.110 and 1993 c 492 s 429;
 (15) RCW 43.72.120 and 1993 c 492 s 430;
 (16) RCW 43.72.130 and 1993 c 492 s 449;
 (17) RCW 43.72.140 and 1993 c 492 s 450;
 (18) RCW 43.72.150 and 1993 c 492 s 451;
 (19) RCW 43.72.160 and 1993 c 492 s 452;
 (20) RCW 43.72.170 and 1995 c 2 s 2 & 1993 c 492 s 453;
 (21) RCW 43.72.180 and 1993 c 492 s 454;
 (22) RCW 43.72.190 and 1993 c 492 s 455;
 (23) RCW 43.72.210 and 1993 c 492 s 463;
 (24) RCW 43.72.220 and 1993 c 494 s 3 & 1993 c 492 s 464;
 (25) RCW 43.72.225 and 1994 c 4 s 4;
 (26) RCW 43.72.230 and 1993 c 492 s 465;
 (27) RCW 43.72.240 and 1993 c 494 s 4 & 1993 c 492 s 466;
 (28) ~~((RCW 43.72.300 and 1993 c 492 s 447;~~
~~((29)) RCW 43.72.310 and 1993 c 492 s 448;~~
~~((30)) RCW 43.72.800 and 1993 c 492 s 457;~~
 ((31)) (29) RCW 43.72.810 and 1993 c 492 s 474;
 ((32)) (30) RCW 43.72.820 and 1993 c 492 s 475;
 ((33)) (31) RCW 43.72.830 and 1993 c 492 s 476;
 ((34)) (32) RCW 43.72.840 and 1993 c 492 s 478;
 ((35)) (33) RCW 43.72.870 and 1993 c 494 s 5;
 ((36)) (34) RCW 48.01.200 and 1993 c 492 s 294;
 ((37)) (35) RCW 48.43.010 and 1993 c 492 s 432;
 ((38)) (36) RCW 48.43.020 and 1993 c 492 s 433;
 ((39)) (37) RCW 48.43.030 and 1993 c 492 s 434;
 ((40)) (38) RCW 48.43.040 and 1993 c 492 s 435;
 ((41)) (39) RCW 48.43.050 and 1993 c 492 s 436;
 ((42)) (40) RCW 48.43.060 and 1993 c 492 s 437;
 ((43)) (41) RCW 48.43.070 and 1993 c 492 s 438;
 ((44)) (42) RCW 48.43.080 and 1993 c 492 s 439;
 ((43)) (43) RCW 48.43.090 and 1993 c 492 s 440;

- ~~((46))~~ (44) RCW 48.43.100 and 1993 c 492 s 441;
- ~~((47))~~ (45) RCW 48.43.110 and 1993 c 492 s 442;
- ~~((48))~~ (46) RCW 48.43.120 and 1993 c 492 s 443;
- ~~((49))~~ (47) RCW 48.43.130 and 1993 c 492 s 444;
- ~~((50))~~ (48) RCW 48.43.140 and 1993 c 492 s 445;
- ~~((51))~~ (49) RCW 48.43.150 and 1993 c 492 s 446;
- ~~((52))~~ (50) RCW 48.43.160 and 1993 c 492 s 426;
- ~~((53))~~ (51) RCW 48.43.170 and 1993 c 492 s 431;
- ~~((54))~~ (52) RCW 48.01.210 and 1993 c 462 s 51;
- ~~((53))~~ (53) RCW 48.20.540 and 1993 c 492 s 283;
- ~~((56))~~ (54) RCW 48.21.340 and 1993 c 492 s 284;
- ~~((57))~~ (55) RCW 48.44.480 and 1993 c 492 s 285;
- ~~((58))~~ (56) RCW 48.46.550 and 1993 c 492 s 286;
- ~~((50))~~ (57) RCW 70.170.100 and 1993 c 492 s 259, 1990 c 269 s 12, & 1989 1st ex.s. c 9 s 510;
- ~~((60))~~ (58) RCW 70.170.110 and 1993 c 492 s 260 & 1989 1st ex.s. c 9 s 511;
- ~~((61))~~ (59) RCW 70.170.120 and 1993 c 492 s 261;
- ~~((62))~~ (60) RCW 70.170.130 and 1993 c 492 s 262;
- ~~((63))~~ (61) RCW 70.170.140 and 1993 c 492 s 263;
- ~~((64))~~ (62) RCW 48.44.490 and 1993 c 492 s 288;
- ~~((65))~~ (63) RCW 48.46.560 and 1993 c 492 s 289; and
- ~~((66))~~ (64) RCW 43.72.200 and 1993 c 492 s 456.

NEW SECTION. **Sec. 12. REPEALERS.** The following acts or parts of acts are each repealed:

- (1) RCW 70.170.100 and 1993 c 492 s 259, 1990 c 269 s 12, & 1989 1st ex.s. c 9 s 510;
- (2) RCW 70.170.110 and 1993 c 492 s 260 & 1989 1st ex.s. c 9 s 511;
- (3) RCW 70.170.120 and 1993 c 492 s 261;
- (4) RCW 70.170.130 and 1993 c 492 s 262;
- (5) RCW 70.170.140 and 1993 c 492 s 263; and
- (6) RCW 43.72.070 and 1993 c 492 s 409.

NEW SECTION. **Sec. 13.** RCW 70.170.080 and 1993 sp.s. c 24 s 925, 1991 sp.s. c 13 s 71, & 1989 1st ex.s. c 9 s 508 are each repealed.

NEW SECTION. **Sec. 14.** If specific funding through the health services account to continue the comprehensive hospital abstract reporting system is not provided by June 30, 1995, in the omnibus appropriations act, section 13 of this act is null and void.

NEW SECTION. **Sec. 15. CODIFICATION.** Sections 1 through 4 of this act are each added to chapter 43.70 RCW.

NEW SECTION. **Sec. 16. CAPTIONS.** Captions as used in this act constitute no part of the law.

NEW SECTION. Sec. 17. 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. 18. EMERGENCY CLAUSE—EFFECTIVE DATE. 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, 1995, except sections 8 through 11 of this act which shall take effect immediately.

Passed the House April 23, 1995.

Passed the Senate April 23, 1995.

Approved by the Governor May 8, 1995.

Filed in Office of Secretary of State May 8, 1995.

CHAPTER 268

[House Bill 1088]

SEX OFFENDERS—CLARIFICATION OF SCOPE OF DEFINITION

AN ACT Relating to sex offenders; amending RCW 9.94A.030, 9A.44.130, 9A.44.140, and 13.40.150; and creating a new section.

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

NEW SECTION. Sec. 1. In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies.

Sec. 2. RCW 9.94A.030 and 1994 c 261 s 16 are each 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 16.52.200(6) or 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 RCW 38.52.430.

(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(9); (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) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;
(o) Robbery in the second degree;
(p) Sexual exploitation;
(q) Vehicular assault;
(r) 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;

(s) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under this section;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.125;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection.

(22) "Nonviolent offense" means an offense which is not a violent offense.

(23) "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.

(24) "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.

(25) "Persistent offender" is an offender who:

(a) Has been convicted in this state of any felony considered a most serious offense; and

(b) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

(26) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(27) "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.

(28) "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.

(29) "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.

(30) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(31) "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 a felony 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 13.40.135; 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.

(32) "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.

(33) "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.

(34) "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.

(35) "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.

(36) "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.

(37) "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 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 (31) of this section are not eligible for the work crew program.

(38) "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.

(39) "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.

(40) "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. 3. RCW 9A.44.130 and 1994 c 84 s 2 are each amended to read as follows:

(1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence.

(2) The person shall provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; and (h) social security number.

(3)(a) Sex offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses:

(i) **SEX OFFENDERS IN CUSTODY.** Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(ii) **SEX OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders, who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.I40.

(iii) **SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(iv) **SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders who move to Washington state from another state that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state, federal statutes, or Washington state for offenses committed on or after February 28, 1990. Sex offenders from other states who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (7)

of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within ten days of establishing the new residence. If any person required to register pursuant to this section moves to a new county, the person must register with the county sheriff in the new county within ten days of establishing the new residence. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.

(5) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex offense by RCW 9.94A.030 as well as any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030.

(7) A person who knowingly fails to register as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor.

Sec. 4. RCW 9A.44.140 and 1991 c 274 s 3 are each amended to read as follows:

(1) The duty to register under RCW 9A.44.130 shall end:

(a) For a person convicted of a class A felony: Such person may only be relieved of the duty to register under subsection (2) or (3) of this section.

(b) For a person convicted of a class B felony: Fifteen years after the last date of release from confinement, if any, (including full-time residential

treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of any new offenses.

(c) For a person convicted of a class C felony or an attempt, solicitation, or conspiracy to commit a class C felony: Ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses.

(2) Any person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions in other states, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. Except as provided in subsection (3) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(3) An offender having a duty to register under RCW 9A.44.130 for a sex offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after adjudication, and may consider other factors. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was fifteen years of age or older only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was under the age of fifteen if the petitioner (a) has not been adjudicated of any additional sex offenses during the twenty-four months following the adjudication for the sex offense giving rise to the duty to register, and (b) the petitioner proves by a preponderance of the evidence that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(4) Unless relieved of the duty to register pursuant to this section, a violation of RCW 9A.44.130 is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

(5) Nothing in RCW 9.94A.220 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to RCW 9A.44.130.

Sec. 5. RCW 13.40.150 and 1992 c 205 s 109 are each amended to read as follows:

(1) In disposition hearings all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible in a hearing on the information. The youth or the youth's counsel and the prosecuting attorney shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when such individuals are reasonably available, but sources of confidential information need not be disclosed. The prosecutor and counsel for the juvenile may submit recommendations for disposition.

(2) For purposes of disposition:

- (a) Violations which are current offenses count as misdemeanors;
- (b) Violations may not count as part of the offender's criminal history;
- (c) In no event may a disposition for a violation include confinement.

(3) Before entering a dispositional order as to a respondent found to have committed an offense, the court shall hold a disposition hearing, at which the court shall:

(a) Consider the facts supporting the allegations of criminal conduct by the respondent;

(b) Consider information and arguments offered by parties and their counsel;

(c) Consider any predisposition reports;

(d) Consult with the respondent's parent, guardian, or custodian on the appropriateness of dispositional options under consideration and afford the respondent and the respondent's parent, guardian, or custodian an opportunity to speak in the respondent's behalf;

(e) Allow the victim or a representative of the victim and an investigative law enforcement officer to speak;

(f) Determine the amount of restitution owing to the victim, if any;

(g) Determine whether the respondent is a serious offender, a middle offender, or a minor or first offender;

(h) Consider whether or not any of the following mitigating factors exist:

(i) The respondent's conduct neither caused nor threatened serious bodily injury or the respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury;

(ii) The respondent acted under strong and immediate provocation;

(iii) The respondent was suffering from a mental or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense;

(iv) Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and

(v) There has been at least one year between the respondent's current offense and any prior criminal offense;

(i) Consider whether or not any of the following aggravating factors exist:

(i) In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;

(ii) The offense was committed in an especially heinous, cruel, or depraved manner;

(iii) The victim or victims were particularly vulnerable;

(iv) The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;

(v) The current offense included a finding of sexual motivation pursuant to RCW ((9.94A.127)) 13.40.135;

(vi) The respondent was the leader of a criminal enterprise involving several persons; and

(vii) There are other complaints which have resulted in diversion or a finding or plea of guilty but which are not included as criminal history.

(4) The following factors may not be considered in determining the punishment to be imposed:

(a) The sex of the respondent;

(b) The race or color of the respondent or the respondent's family;

(c) The creed or religion of the respondent or the respondent's family;

(d) The economic or social class of the respondent or the respondent's family; and

(e) Factors indicating that the respondent may be or is a dependent child within the meaning of this chapter.

(5) A court may not commit a juvenile to a state institution solely because of the lack of facilities, including treatment facilities, existing in the community.

Passed the House April 19, 1995.

Passed the Senate April 4, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 269

[Engrossed Substitute House Bill 1107]

BOARDS AND COMMISSIONS—ELIMINATION AND CONSOLIDATION

AN ACT Relating to the elimination and consolidation of boards and commissions; amending RCW 13.40.025, 9.94A.040, 18.16.050, 18.145.030, 18.145.050, 18.145.070, 18.145.080, 28B.10.804, 28B.80.575, 38.54.030, 38.52.040, 43.19.190, 43.19.1905, 43.19.19052, 43.19.1906, 43.19.1937, 43.19A.020, 43.20A.750, 43.70.010, 43.70.070, 70.170.020, 43.150.030, 46.61.380, 81.104.090, 47.26.121, 47.66.030, 47.26.140, 47.66.040, 47.26.160, 70.95D.010, 70.95D.060, 70.95B.020, 70.95B.040, 70.95B.100, 70.119.020, 70.119.050, 70.119.110, 75.44.140, and 90.70.065; reenacting and amending RCW 38.52.030, 82.44.180, and 75.30.050; adding a new section to chapter 9.94A RCW; adding a new section to chapter 39.19 RCW; adding a new section to chapter 43.63A RCW; adding a new section to chapter 70.95D RCW; adding a new section to chapter 70.95B RCW; adding a new section to chapter 70.119 RCW; creating new sections; repealing RCW 1.30.010, 1.30.020, 1.30.030, 1.30.040, 1.30.050, 1.30.060, 2.52.010, 2.52.020, 2.52.030, 2.52.035, 2.52.040, 2.52.050,

18.145.060, 27.34.300, 27.60.010, 27.60.020, 27.60.030, 27.60.040, 27.60.050, 27.60.070, 27.60.090, 27.60.900, 28B.80.550, 28B.80.555, 39.19.040, 43.19.1904, 43.20A.730, 43.31.631, 43.52.373, 70.170.030, 70.170.040, 43.150.060, 43.17.260, 43.17.270, 43.17.280, 43.17.290, 43.17.300, 47.66.020, 47.66.050, 47.66.060, 48.22.071, 48.22.072, 70.95D.050, 70.95B.070, 70.119.080, 81.62.010, 81.62.020, 81.62.030, 81.62.040, 81.62.050, 81.62.060, 81.62.900, 81.62.901, and 90.56.450; repealing 1994 c 232 s 27 (uncodified); repealing 1991 c 53 s 1 and 1987 c 480 s 6 (uncodified); providing effective dates; and declaring an emergency.

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

**PART 1
LAW REVISION COMMISSION**

NEW SECTION. Sec. 101. The following acts or parts of acts are each repealed:

- (1) RCW 1.30.010 and 1982 c 183 s 1;
- (2) RCW 1.30.020 and 1982 c 183 s 2;
- (3) RCW 1.30.030 and 1982 c 183 s 3;
- (4) RCW 1.30.040 and 1987 c 505 s 2 & 1982 c 183 s 4;
- (5) RCW 1.30.050 and 1982 c 183 s 5; and
- (6) RCW 1.30.060 and 1982 c 183 s 9.

**PART 2
JUDICIAL COUNCIL**

NEW SECTION. Sec. 201. The following acts or parts of acts are each repealed:

- (1) RCW 2.52.010 and 1994 c 32 s 1, 1987 c 322 s 1, 1977 ex.s. c 112 s 1, 1973 c 18 s 1, 1971 c 40 s 1, 1967 c 124 s 1, 1961 c 271 s I, 1955 c 40 s 1, & 1925 ex.s. c 45 s 1;
- (2) RCW 2.52.020 and 1925 ex.s. c 45 s 2;
- (3) RCW 2.52.030 and 1987 c 322 s 2 & 1925 ex.s. c 45 s 3;
- (4) RCW 2.52.035 and 1987 c 322 s 4;
- (5) RCW 2.52.040 and 1977 ex.s. c 112 s 2 & 1925 ex.s. c 45 s 4; and
- (6) RCW 2.52.050 and 1987 c 322 s 3 & 1981 c 260 s 1.

**PART 3
JUVENILE DISPOSITION STANDARDS COMMISSION**

NEW SECTION. Sec. 301. A new section is added to chapter 9.94A RCW to read as follows:

(1) The juvenile disposition standards commission is hereby abolished and its powers, duties, and functions are hereby transferred to the sentencing guidelines commission. All references to the director or the juvenile disposition standards commission in the Revised Code of Washington shall be construed to mean the director or the sentencing guidelines commission.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the juvenile disposition standards commission shall be delivered to the custody of the sentencing guidelines commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the juvenile disposition standards commission shall be

made available to the sentencing guidelines commission. All funds, credits, or other assets held by the juvenile disposition standards commission shall be assigned to the sentencing guidelines commission.

(b) Any appropriations made to the juvenile disposition standards commission shall, on the effective date of this section, be transferred and credited to the sentencing guidelines commission.

(c) If 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.

(3) All employees of the juvenile disposition standards commission are transferred to the jurisdiction of the sentencing guidelines commission. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the sentencing guidelines commission 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.

(4) All rules and all pending business before the juvenile disposition standards commission shall be continued and acted upon by the sentencing guidelines commission. All existing contracts and obligations shall remain in full force and shall be performed by the sentencing guidelines commission.

(5) The transfer of the powers, duties, functions, and personnel of the juvenile disposition standards commission shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, 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.

(7) Nothing contained in this section 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. 302. RCW 13.40.025 and 1986 c 288 s 8 are each amended to read as follows:

(1) There is established a juvenile disposition standards commission to propose disposition standards to the legislature in accordance with RCW 13.40.030 and perform the other responsibilities set forth in this chapter.

(2) The commission shall be composed of the secretary or the secretary's designee and the following nine members appointed by the governor, subject to confirmation by the senate: (a) A superior court judge; (b) a prosecuting

attorney or deputy prosecuting attorney; (c) a law enforcement officer; (d) an administrator of juvenile court services; (e) a public defender actively practicing in juvenile court; (f) a county legislative official or county executive; and (g) three other persons who have demonstrated significant interest in the adjudication and disposition of juvenile offenders. In making the appointments, the governor shall seek the recommendations of the association of superior court judges in respect to the member who is a superior court judge; of Washington prosecutors in respect to the prosecuting attorney or deputy prosecuting attorney member; of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer; of juvenile court administrators in respect to the member who is a juvenile court administrator; and of the state bar association in respect to the public defender member; and of the Washington association of counties in respect to the member who is either a county legislative official or county executive.

(3) The secretary or the secretary's designee shall serve as chairman of the commission.

(4) The secretary shall serve on the commission during the secretary's tenure as secretary of the department. The term of the remaining members of the commission shall be three years. The initial terms shall be determined by lot conducted at the commission's first meeting as follows: (a) Four members shall serve a two-year term; and (b) four members shall serve a three-year term. In the event of a vacancy, the appointing authority shall designate a new member to complete the remainder of the unexpired term.

(5) Commission members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members shall be compensated in accordance with RCW 43.03.240.

(6) The commission shall ~~((meet at least once every three months))~~ cease to exist on June 30, 1997, and its powers and duties shall be transferred to the sentencing guidelines commission established under RCW 9.94A.040.

Sec. 303. RCW 9.94A.040 and 1994 c 87 s 1 are each amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The commission shall, following a public hearing or hearings:

(a) Devise a series of recommended standard sentence ranges for all felony offenses and a system for determining which range of punishment applies to each offender based on the extent and nature of the offender's criminal history, if any;

(b) Devise recommended prosecuting standards in respect to charging of offenses and plea agreements; and

(c) Devise recommended standards to govern whether sentences are to be served consecutively or concurrently.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) In devising the standard sentence ranges of total and partial confinement under this section, the commission is subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.020.

(5) In carrying out its duties under subsection (2) of this section, the commission shall give consideration to the existing guidelines adopted by the association of superior court judges and the Washington association of prosecuting attorneys and the experience gained through use of those guidelines. The commission shall emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender.

(6) This commission shall conduct a study to determine the capacity of correctional facilities and programs which are or will be available. While the commission need not consider such capacity in arriving at its recommendations, the commission shall project whether the implementation of its recommendations would result in exceeding such capacity. If the commission finds that this result would probably occur, then the commission shall prepare an additional list of standard sentences which shall be consistent with such capacity.

(7) The commission may recommend to the legislature revisions or modifications to the standard sentence ranges and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity.

(8) The commission shall study the existing criminal code and from time to time make recommendations to the legislature for modification.

(9) The commission may (a) serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local sentencing practices; (b) develop and maintain a computerized sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (c) conduct ongoing research regarding sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the criminal justice system.

(10) The staff and executive officer of the commission may provide staffing and services to the juvenile disposition standards commission, if authorized by

RCW 13.40.025 and 13.40.027. The commission may conduct joint meetings with the juvenile disposition standards commission.

(11) The commission shall assume the powers and duties of the juvenile disposition standards commission after June 30, 1997.

(12) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

PART 4
COSMETOLOGY, BARBERING, ESTHETICS, AND
MANICURING ADVISORY BOARD

NEW SECTION. Sec. 401. The legislature finds that the economic opportunities for cosmetologists, barbers, estheticians, and manicurists have deteriorated in this state as a result of the lack of skilled practitioners, inadequate licensing controls, and inadequate enforcement of health standards. To increase the opportunities for individuals to earn viable incomes in these professions and to protect the general health of the public, the state cosmetology, barbering, esthetics, and manicuring advisory board should be reconstituted and given a new charge to develop appropriate responses to this situation, including legislative proposals.

Sec. 402. RCW 18.16.050 and 1991 c 324 s 3 are each amended to read as follows:

(1) There is created a state cosmetology, barbering, esthetics, and manicuring advisory board consisting of ~~((five))~~ seven members appointed by the ~~((governor who shall advise the director concerning the administration of this chapter))~~ director. ~~((Four))~~ These seven members of the board shall include ~~((a minimum of two instructors))~~ a representative of a private cosmetology school and a representative of a public vocational technical school involved in cosmetology training, with the balance made up of currently practicing licensees who have been engaged in the practice of manicuring, esthetics, barbering, or cosmetology for at least three years. One member of the board shall be a consumer who is unaffiliated with the cosmetology, barbering, esthetics, or manicuring industry. The term of office for all board members ~~((is three years))~~ serving as of the effective date of this section expires June 30, 1995. On June 30, 1995, the director shall appoint seven new members to the board. These new members shall serve a term of two years, at the conclusion of which the board shall cease to exist. Any members serving on the advisory board as of the effective date of this section are eligible to be reappointed. Any board member may be removed for just cause. The director may appoint a new member to fill any vacancy on the ~~((committee))~~ board for the remainder of the unexpired term. ~~((No board member may serve more than two consecutive terms, whether full or partial.))~~

(2) The board appointed on June 30, 1995, together with the director or the director's designee, shall conduct a thorough review of educational requirements, licensing requirements, and enforcement and health standards for persons

engaged in cosmetology, barbering, esthetics, or manicuring and shall prepare a report to be delivered to the governor, the director, and the chairpersons of the governmental operations committees of the house of representatives and the senate. The report must summarize their findings and make recommendations, including, if appropriate, recommendations for legislation reforming and restructuring the regulation of cosmetology, barbering, esthetics, and manicuring.

(3) Board members shall be entitled to compensation pursuant to RCW 43.03.240 for each day spent conducting official business and to reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060.

PART 5 SHORTHAND REPORTERS ADVISORY BOARD

Sec. 501. RCW 18.145.030 and 1989 c 382 s 4 are each amended to read as follows:

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) "Shorthand reporter" and "court reporter" mean an individual certified under this chapter.

~~((4) "Board" means the Washington state shorthand reporter advisory board.))~~

Sec. 502. RCW 18.145.050 and 1989 c 382 s 6 are each amended to read as follows:

In addition to any other authority provided by law, the director may:

(1) Adopt rules in accordance with chapter 34.05 RCW that are necessary to implement this chapter;

(2) Set all certification examination, renewal, late renewal, duplicate, and verification fees in accordance with RCW 43.24.086;

(3) Establish the forms and procedures necessary to administer this chapter;

(4) Issue a certificate to any applicant who has met the requirements for certification;

(5) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter;

(6) Investigate complaints or reports of unprofessional conduct as defined in this chapter and hold hearings pursuant to chapter 34.05 RCW;

(7) Issue subpoenas for records and attendance of witnesses, statements of charges, statements of intent to deny certificates, and orders; administer oaths; take or cause depositions to be taken; and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(8) Maintain the official departmental record of all applicants and certificate holders;

(9) Delegate, in writing to a designee, the authority to issue subpoenas, statements of charges, and statements of intent to deny certification;

(10) Prepare and administer or approve the preparation and administration of examinations for certification;

(11) Establish by rule the procedures for an appeal of a failure of an examination;

(12) Conduct a hearing under chapter 34.05 RCW on an appeal of a denial of a certificate based on the applicant's failure to meet minimum qualifications for certification;

(13) Establish ad hoc advisory committees whose membership shall include representatives of professional court reporting and stenomasking associations and representatives from accredited schools offering degrees in court reporting or stenomasking to advise the director on testing procedures, professional standards, disciplinary activities, or any other matters deemed necessary.

Sec. 503. RCW 18.145.070 and 1989 c 382 s 8 are each amended to read as follows:

The director(~~(, members of the board,)~~) and individuals acting on ~~((their))~~ the director's behalf shall not be civilly liable for any act performed in good faith in the course of their duties.

Sec. 504. RCW 18.145.080 and 1989 c 382 s 9 are each amended to read as follows:

(1) The department shall issue a certificate to any applicant who, as determined by the director (~~(upon advice of the board)~~), has:

(a) Successfully completed an examination approved by the director;

(b) Good moral character;

(c) Not engaged in unprofessional conduct; and

(d) Not been determined to be unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

(2) A one-year temporary certificate may be issued, at the discretion of the director, to a person holding one of the following: National shorthand reporters association certificate of proficiency, registered professional reporter certificate, or certificate of merit; a current court or shorthand reporter certification, registration, or license of another state; or a certificate of graduation of a court reporting school. To continue to be certified under this chapter, a person receiving a temporary certificate shall successfully complete the examination under subsection (1)(a) of this section within one year of receiving the temporary certificate, except that the director may renew the temporary certificate if extraordinary circumstances are shown.

(3) The examination required by subsection (1)(a) of this section shall be no more difficult than the examination provided by the court reporter examining committee as authorized by RCW 2.32.180.

NEW SECTION. **Sec. 505.** RCW 18.145.060 and 1989 c 382 s 7 are each repealed.

**PART 6
MARITIME BICENTENNIAL ADVISORY COMMITTEE**

NEW SECTION. **Sec. 601.** RCW 27.34.300 and 1989 c 82 s 2 are each repealed.

**PART 7
CENTENNIAL COMMISSION**

NEW SECTION. **Sec. 701.** The following acts or parts of acts are each repealed:

- (1) RCW 27.60.010 and 1982 c 90 s 1;
- (2) RCW 27.60.020 and 1985 c 291 s 1, 1984 c 120 s 1, & 1982 c 90 s 2;
- (3) RCW 27.60.030 and 1982 c 90 s 3;
- (4) RCW 27.60.040 and 1987 c 195 s 1, 1985 c 291 s 2, & 1982 c 90 s 4;
- (5) RCW 27.60.050 and 1982 c 90 s 5;
- (6) RCW 27.60.070 and 1985 c 291 s 4;
- (7) RCW 27.60.090 and 1986 c 157 s 2; and
- (8) RCW 27.60.900 and 1989 c 82 s 3, 1985 c 268 s 3, & 1982 c 90 s 6.

**PART 8
STUDENT FINANCIAL AID POLICY STUDY
ADVISORY COMMITTEE**

Sec. 801. RCW 28B.10.804 and 1969 ex.s. c 222 s 10 are each amended to read as follows:

The commission shall be cognizant of the following guidelines in the performance of its duties:

(1) The commission shall be research oriented, not only at its inception but continually through its existence.

(2) The commission shall coordinate all existing programs of financial aid except those specifically dedicated to a particular institution by the donor.

(3) The commission shall take the initiative and responsibility for coordinating all federal student financial aid programs to insure that the state recognizes the maximum potential effect of these programs, and shall design the state program which complements existing federal, state and institutional programs.

(4) Counseling is a paramount function of student financial aid, and in most cases could only be properly implemented at the institutional levels; therefore, state student financial aid programs shall be concerned with the attainment of those goals which, in the judgment of the commission, are the reasons for the existence of a student financial aid program, and not solely with administration of the program on an individual basis.

(5) ~~(In the development of any new program, the commission shall seek advice from and consultation with the institutions of higher learning, state agencies, industry, labor, and such other interested groups as may be able to contribute to the effectiveness of program development and implementation.~~

(6)) The "package" approach of combining loans, grants and employment for student financial aid shall be the conceptional element of the state's involvement.

**PART 9
ADVISORY COMMITTEE ON ACCESS TO EDUCATION
FOR STUDENTS WITH DISABILITIES**

NEW SECTION. Sec. 901. The following acts or parts of acts are each repealed:

- (1) RCW 28B.80.550 and 1991 c 228 s 7; and
- (2) RCW 28B.80.555 and 1991 c 228 s 8.

**PART 10
ADVISORY COMMITTEE FOR PROGRAM FOR
DISLOCATED FOREST PRODUCTS WORKERS**

Sec. 1001. RCW 28B.80.575 and 1991 c 315 s 19 are each amended to read as follows:

The board shall administer a program designed to provide upper division higher education opportunities to dislocated forest products workers, their spouses, and others in timber impact areas. In administering the program, the board shall have the following powers and duties:

(1) Distribute funding for institutions of higher education to service placebound students in the timber impact areas meeting the following criteria, as determined by the employment security department: (a) A lumber and wood products employment location quotient at or above the state average; (b) a direct lumber and wood products job loss of one hundred positions or more; and (c) an annual unemployment rate twenty percent above the state average; and

~~(2) ((Appoint an advisory committee to assist the board in program design and future project selection;~~

~~(3)) Monitor the program and report on student progress and outcome((+and~~

~~(4) Report to the legislature by December 1, 1993, on the status of the program)).~~

**PART 11
STATE FIRE DEFENSE BOARD AND
FIRE PROTECTION POLICY BOARD**

Sec. 1101. RCW 38.54.030 and 1992 c 117 s 11 are each amended to read as follows:

~~((There is created the state fire defense board consisting of the state fire marshal, a representative from the department of natural resources appointed by the commissioner of public lands, the assistant director of the emergency management division of the department of community development, and one representative selected by each regional fire defense board in the state. Members of the state fire defense board shall select from among themselves a chairperson.~~

~~Members serving on the board do so in a voluntary capacity and are not eligible for reimbursement for meeting related expenses from the state.)~~

The state fire ~~((defense board shall develop and maintain))~~ protection policy board shall review and make recommendations to the director on the refinement and maintenance of the Washington state fire services mobilization plan, which shall include the procedures to be used during fire and other emergencies for coordinating local, regional, and state fire jurisdiction resources. In carrying out this duty, the fire protection policy board shall consult with and solicit recommendations from representatives of state and local fire and emergency management organizations, regional fire defense boards, and the department of natural resources. The Washington state fire services mobilization plan shall be consistent with, and made part of, the Washington state comprehensive emergency management plan. The director shall review the fire services mobilization plan as submitted by the state fire defense board and after consultation with the fire protection policy board, recommend changes that may be necessary, and approve the fire services mobilization plan for inclusion within the state comprehensive emergency management plan.

It is the responsibility of the director to mobilize jurisdictions under the Washington state fire services mobilization plan. The state fire marshal shall serve as the state fire resources coordinator when the Washington state fire services mobilization plan is mobilized.

PART 12

EMERGENCY MANAGEMENT COUNCIL AND RELATED BOARDS

Sec. 120I. RCW 38.52.030 and 1991 c 322 s 20 and 1991 c 54 s 2 are each reenacted and amended to read as follows:

(1) The director may employ such personnel and may make such expenditures within the appropriation therefor, or from other funds made available for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.

(2) The director, subject to the direction and control of the governor, shall be responsible to the governor for carrying out the program for emergency management of this state. The director shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter, as may be prescribed by the governor.

(3) The director shall develop and maintain a comprehensive, all-hazard emergency plan for the state which shall include an analysis of the natural and man-caused hazards which could affect the state of Washington, and shall include the procedures to be used during emergencies for coordinating local resources, as necessary, and the resources of all state agencies, departments, commissions, and boards. The comprehensive emergency management plan shall

direct the department in times of state emergency to administer and manage the state's emergency operations center. This will include representation from all appropriate state agencies and be available as a single point of contact for the authorizing of state resources or actions, including emergency permits. The comprehensive, all-hazard emergency plan authorized under this subsection may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. This plan shall be known as the comprehensive emergency management plan.

(4) In accordance with the comprehensive emergency management plans and the programs for the emergency management of this state, the director shall procure supplies and equipment, institute training programs and public information programs, and shall take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(5) The director shall make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the capabilities of the state for emergency management, and shall plan for the most efficient emergency use thereof.

~~(6) (The director may appoint a communications coordinating committee consisting of six to eight persons with the director, or his or her designee, as chairman thereof. Three of the members shall be appointed from qualified, trained and experienced telephone communications administrators or engineers actively engaged in such work within the state of Washington at the time of appointment, and three of the members shall be appointed from qualified, trained and experienced radio communication administrators or engineers actively engaged in such work within the state of Washington at the time of appointment. This committee))~~ The emergency management council shall advise the director on all aspects of the communications and warning systems and facilities operated or controlled under the provisions of this chapter.

(7) The director, through the state enhanced 911 coordinator, shall coordinate and facilitate implementation and operation of a state-wide enhanced 911 emergency communications network.

(8) The director shall appoint a state coordinator of search and rescue operations to coordinate those state resources, services and facilities (other than those for which the state director of aeronautics is directly responsible) requested by political subdivisions in support of search and rescue operations, and on request to maintain liaison with and coordinate the resources, services, and facilities of political subdivisions when more than one political subdivision is engaged in joint search and rescue operations.

(9) The director, subject to the direction and control of the governor, shall prepare and administer a state program for emergency assistance to individuals within the state who are victims of a natural or man-made disaster, as defined by RCW 38.52.010(6). Such program may be integrated into and coordinated

with disaster assistance plans and programs of the federal government which provide to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of assistance to individuals affected by a disaster. Further, such program may include, but shall not be limited to, grants, loans, or gifts of services, equipment, supplies, materials, or funds of the state, or any political subdivision thereof, to individuals who, as a result of a disaster, are in need of assistance and who meet standards of eligibility for disaster assistance established by the department of social and health services: PROVIDED, HOWEVER, That nothing herein shall be construed in any manner inconsistent with the provisions of Article VIII, section 5 or section 7 of the Washington state Constitution.

(10) The director shall appoint a state coordinator for radioactive and hazardous waste emergency response programs. The coordinator shall consult with the state radiation control officer in matters relating to radioactive materials. The duties of the state coordinator for radioactive and hazardous waste emergency response programs shall include:

(a) Assessing the current needs and capabilities of state and local radioactive and hazardous waste emergency response teams on an ongoing basis;

(b) Coordinating training programs for state and local officials for the purpose of updating skills relating to emergency response;

(c) Utilizing appropriate training programs such as those offered by the federal emergency management agency, the department of transportation and the environmental protection agency; and

(d) Undertaking other duties in this area that are deemed appropriate by the director.

Sec. 1202. RCW 38.52.040 and 1988 c 81 s 18 are each amended to read as follows:

(1) There is hereby created the emergency management council (hereinafter called the council), to consist of not ~~((less than seven nor))~~ more than seventeen members who shall be appointed by the governor. ~~((The council shall advise the governor and the director on all matters pertaining to emergency management and shall advise the chief of the Washington state patrol on safety in the transportation of hazardous materials described in RCW 46.48.170.))~~ The membership of the council shall include, but not be limited to, representatives of city and county governments, sheriffs and police chiefs, the Washington state patrol, the military department, the department of ecology, state and local fire chiefs, seismic safety experts, state and local emergency management directors, search and rescue volunteers, medical professions who have expertise in emergency medical care, building officials, and private industry~~((, and local fire chiefs))~~. The representatives of private industry shall include persons knowledgeable in ~~((the handling and transportation of hazardous materials))~~ emergency and hazardous materials management. The council members shall elect a chairman from within the council membership. The members of the council shall serve without compensation, but may be reimbursed for their 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.

(2) The emergency management council shall advise the governor and the director on all matters pertaining to state and local emergency management. The council may appoint such ad hoc committees, subcommittees, and working groups as are required to develop specific recommendations for the improvement of emergency management practices, standards, policies, or procedures. The council shall ensure that the governor receives an annual assessment of state-wide emergency preparedness including, but not limited to, specific progress on hazard mitigation and reduction efforts, implementation of seismic safety improvements, reduction of flood hazards, and coordination of hazardous materials planning and response activities. The council or a subcommittee thereof shall periodically convene in special session and serve during those sessions as the state emergency response commission required by P.L. 99-499, the emergency planning and community right-to-know act. When sitting in session as the state emergency response commission, the council shall confine its deliberations to those items specified in federal statutes and state administrative rules governing the coordination of hazardous materials policy. The council shall review administrative rules governing state and local emergency management practices and recommend necessary revisions to the director.

NEW SECTION. Sec. 1203. By July 1, 1995, the director of community, trade, and economic development shall terminate the state emergency response commission, the disaster assistance council, the hazardous materials advisory committee, the hazardous materials transportation act grant review committee, the flood damage reduction committee, and the hazard mitigation grant review committee. The director shall ensure that the responsibilities of these committees are carried out by the emergency management council or subcommittees thereof.

PART 13

OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES ADVISORY COMMITTEE

NEW SECTION. Sec. 1301. RCW 39.19.040 and 1985 c 466 s 45 & 1983 c 120 s 4 are each repealed.

NEW SECTION. Sec. 1302. A new section is added to chapter 39.19 RCW to read as follows:

The director may establish ad hoc advisory committees, as necessary, to assist in the development of policies to carry out the purposes of this chapter.

PART 14

SUPPLY MANAGEMENT ADVISORY BOARD

Sec. 1401. RCW 43.19.190 and 1994 c 138 s 1 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 the legislature: PROVIDED, That any agency may purchase material, supplies, services, and equipment for which the agency has notified the purchasing and material control director that it is more cost-effective for the agency to make the purchase directly from the vendor: 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 group purchasing organizations: 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: 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 RCW 28B.10.029;

(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, or from policies established by the director (~~after~~

~~consultation with the state supply management advisory board: PROVIDED FURTHER, That~~). Also, 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))~~ (4) 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))~~ (5) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment purchased through the division;

~~((7))~~ (6) Prescribe the manner in which supplies, materials, and equipment purchased through the division shall be delivered, stored, and distributed;

~~((8))~~ (7) Provide for the maintenance of a catalogue library, manufacturers' and wholesalers' lists, and current market information;

~~((9))~~ (8) 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))~~ (9) Provide for the maintenance of inventory records of supplies, materials, and other property;

~~((11))~~ (10) Prepare rules and regulations governing the relationship and procedures between the division of purchasing and state agencies and vendors;

~~((12))~~ (11) 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))~~ (12) Advise state agencies, including educational institutions, regarding compliance with established purchasing and material control policies under existing statutes.

Sec. 1402. RCW 43.19.1905 and 1993 sp.s. c 10 s 3 are each amended to read as follows:

The director of general administration ~~((after consultation with the supply management advisory board))~~ shall establish overall state policy for compliance by all state agencies, including educational institutions, regarding the following purchasing and material control functions:

(1) Development of a state commodity coding system, including common stock numbers for items maintained in stores for reissue;

(2) Determination where consolidations, closures, or additions of stores operated by state agencies and educational institutions should be initiated;

(3) Institution of standard criteria for determination of when and where an item in the state supply system should be stocked;

(4) Establishment of stock levels to be maintained in state stores, and formulation of standards for replenishment of stock;

(5) Formulation of an overall distribution and redistribution system for stock items which establishes sources of supply support for all agencies, including interagency supply support;

(6) Determination of what function data processing equipment, including remote terminals, shall perform in state-wide purchasing and material control for improvement of service and promotion of economy;

(7) Standardization of records and forms used state-wide for supply system activities involving purchasing, receiving, inspecting, storing, requisitioning, and issuing functions (~~under the provisions of RCW 43.19.510~~), including a standard notification form for state agencies to report cost-effective direct purchases, which shall at least identify the price of the goods as available through the division of purchasing, the price of the goods as available from the alternative source, the total savings, and the signature of the notifying agency's director or the director's designee;

(8) Screening of supplies, material, and equipment excess to the requirements of one agency for overall state need before sale as surplus;

(9) Establishment of warehouse operation and storage standards to achieve uniform, effective, and economical stores operations;

(10) Establishment of time limit standards for the issuing of material in store and for processing requisitions requiring purchase;

(11) Formulation of criteria for determining when centralized rather than decentralized purchasing shall be used to obtain maximum benefit of volume buying of identical or similar items, including procurement from federal supply sources;

(12) Development of criteria for use of leased, rather than state owned, warehouse space based on relative cost and accessibility;

(13) Institution of standard criteria for purchase and placement of state furnished materials, carpeting, furniture, fixtures, and nonfixed equipment, in newly constructed or renovated state buildings;

(14) Determination of how transportation costs incurred by the state for materials, supplies, services, and equipment can be reduced by improved freight and traffic coordination and control;

(15) Establishment of a formal certification program for state employees who are authorized to perform purchasing functions as agents for the state under the provisions of chapter 43.19 RCW;

(16) Development of performance measures for the reduction of total overall expense for material, supplies, equipment, and services used each biennium by the state;

(17) Establishment of a standard system for all state organizations to record and report dollar savings and cost avoidance which are attributable to the establishment and implementation of improved purchasing and material control procedures;

(18) Development of procedures for mutual and voluntary cooperation between state agencies, including educational institutions, and political subdivisions for exchange of purchasing and material control services;

(19) Resolution of all other purchasing and material matters (~~referred to him by a member of the advisory board~~) which require the establishment of overall state-wide policy for effective and economical supply management;

(20) Development of guidelines and criteria for the purchase of vehicles, alternate vehicle fuels and systems, equipment, and materials that reduce overall energy-related costs and energy use by the state, including the requirement that new passenger vehicles purchased by the state meet the minimum standards for passenger automobile fuel economy established by the United States secretary of transportation pursuant to the energy policy and conservation act (15 U.S.C. Sec. 2002).

Sec. 1403. RCW 43.19.19052 and 1986 c 158 s 9 are each amended to read as follows:

Initial policy determinations for the functions described in RCW 43.19.1905 shall be developed and published within the 1975-77 biennium by the director(~~after consultation with the supply management advisory board~~) for guidance and compliance by all state agencies, including educational institutions, involved in purchasing and material control. Modifications to these initial supply management policies established during the 1975-77 biennium shall be instituted by the director(~~after consultation with the advisory board~~) in future biennia as required to maintain an efficient and up-to-date state supply management system. The director shall transmit to the governor and the legislature in June 1976 and June 1977 a progress report which indicates the degree of accomplishment of each of these assigned duties, and which summarizes specific achievements obtained in increased effectiveness and dollar savings or cost avoidance within the overall state purchasing and material control system. The second progress report in June 1977 shall include a comprehensive supply management plan which includes the recommended organization of a state-wide purchasing and material control system and development of an orderly schedule for implementing such recommendation. In the interim between these annual progress reports, the director shall furnish periodic reports to the office of financial management for review of progress being accomplished in achieving increased efficiencies and dollar savings or cost avoidance.

It is the intention of the legislature that measurable improvements in the effectiveness and economy of supply management in state government shall be achieved during the 1975-77 biennium, and each biennium thereafter. All agencies, departments, offices, divisions, boards, and commissions and educational, correctional, and other types of institutions are required to cooperate with and support the development and implementation of improved efficiency and economy in purchasing and material control. To effectuate this legislative intention, the director, (~~in consultation with the supply management advisory board, and~~) through the state purchasing and material control director, shall have

the authority to direct and require the submittal of data from all state organizations concerning purchasing and material control matters.

Sec. 1404. RCW 43.19.1906 and 1994 c 300 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. 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 or under RCW 28B.10.029. 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 thirty-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 thirty-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 thirty-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 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 thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both. The agency shall invite at least one quotation each from a certified minority and a certified women-owned vendor who shall otherwise qualify to perform such work. 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 thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be documented for audit purposes. 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;

(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 group purchasing organizations;

(7) Purchases by institutions of higher education not exceeding thirty-five thousand dollars: PROVIDED, That for purchases between two thousand five hundred dollars and thirty-five thousand dollars quotations shall be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both. For purchases between two thousand five hundred dollars and thirty-five thousand dollars, each institution of higher education shall invite at least one quotation each from a certified minority and a certified women-owned vendor who shall otherwise qualify to perform such work. A record of competition for all such purchases made from two thousand five hundred to thirty-five thousand dollars shall be documented for audit purposes; and

(8) Beginning on July 1, 1995, and on July 1 of each succeeding odd-numbered year, the dollar limits specified in 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. 1405. RCW 43.19.1937 and 1975-'76 2nd ex.s. c 21 s 13 are each amended to read as follows:

No (~~member of the state supply management advisory board or~~) state employee whose duties performed for the state include:

- (1) Advising on or drawing specifications for supplies, equipment, commodities, or services;
- (2) Suggesting or determining vendors to be placed upon a bid list;
- (3) Drawing requisitions for supplies, equipment, commodities, or services;
- (4) Evaluating specifications or bids and suggesting or determining awards;

or

(5) Accepting the receipt of supplies, equipment, and commodities or approving the performance of services or contracts; shall accept or receive, directly or indirectly, a personal financial benefit, or accept any gift, token, membership, or service, as a result of a purchase entered into by the state, from any person, firm, or corporation engaged in the sale, lease, or rental of property, material, supplies, equipment, commodities, or services to the state of Washington.

Violation of this section shall be considered a malfeasance and may cause loss of position, and the violator shall be liable to the state upon his official bond for all damages sustained by the state. Contracts involved may be canceled at the option of the state. Penalties provided in this section are not exclusive, and shall not bar action under any other statute penalizing the same act or omission.

Sec. 1406. RCW 43.19A.020 and 1991 c 297 s 3 are each amended to read as follows:

(1) The director shall adopt standards specifying the minimum content of recycled materials in products or product categories. The standards shall:

- (a) Be consistent with the USEPA product standards, unless the director finds that a different standard would significantly increase recycled product availability or competition;
- (b) Consider the standards of other states, to encourage consistency of manufacturing standards;
- (c) Consider regional product manufacturing capability;
- (d) Address specific products or classes of products; and
- (e) Consider postconsumer waste content and the recyclability of the product.

(2) The director shall consult with the (~~supply management board and~~) department of ecology prior to adopting the recycled content standards.

(3) The director shall adopt recycled content standards for at least the following products by the dates indicated:

- (a) By July 1, 1992:
 - (i) Paper and paper products;
 - (ii) Organic recovered materials; and
 - (iii) Latex paint products;
- (b) By July 1, 1993:
 - (i) Products for lower value uses containing recycled plastics;
 - (ii) Retread and remanufactured tires;

- (iii) Lubricating oils;
- (iv) Automotive batteries; and
- (v) Building insulation.

(4) The standards required by this section shall be applied to recycled product purchasing by the department and other state agencies. The standards may be adopted or applied by any other local government in product procurement. The standards shall provide for exceptions under appropriate circumstances to allow purchases of recycled products that do not meet the minimum content requirements of the standards.

NEW SECTION. Sec. 1407. RCW 43.19.1904 and 1979 c 88 s 2, 1975-'76 2nd ex.s. c 21 s 4, 1967 ex.s. c 104 s 4, & 1965 c 8 s 43.19.1904 are each repealed.

PART 15

PRESCRIPTION DRUG PROGRAM ADVISORY COMMITTEE

NEW SECTION. Sec. 1501. By July 1, 1995, the secretary of the department of social and health services shall abolish the prescription drug program advisory committee.

PART 16

TELECOMMUNICATIONS RELAY SERVICE PROGRAM ADVISORY COMMITTEE

NEW SECTION. Sec. 1601. RCW 43.20A.730 and 1992 c 144 s 4, 1990 c 89 s 4, & 1987 c 304 s 4 are each repealed.

PART 17

LABORATORY ACCREDITATION ADVISORY COMMITTEE

NEW SECTION. Sec. 1701. By July 1, 1995, the director of the department of ecology shall abolish the laboratory accreditation advisory committee.

PART 18

METALS MINING ADVISORY GROUP

NEW SECTION. Sec. 1801. 1994 c 232 s 27 (uncodified) is repealed.

PART 19

ECONOMIC RECOVERY COORDINATION BOARD

Sec. 1901. RCW 43.20A.750 and 1993 c 280 s 38 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) A lumber and wood products employment location quotient at or above the state average; ~~((ii))~~ (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 ~~((iii))~~ (c) 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).~~

NEW SECTION. Sec. 1902. RCW 43.31.631 and 1993 c 316 s 3 & 1991 c 314 s 6 are each repealed.

PART 20**JOINT OPERATING AGENCY EXECUTIVE COMMITTEE**

NEW SECTION. Sec. 2001. RCW 43.52.373 and 1982 1st ex.s. c 43 s 6 & 1965 c 8 s 43.52.373 are each repealed.

PART 21**OFFICE OF CRIME VICTIMS ADVOCACY ADVISORY COMMITTEE**

NEW SECTION. Sec. 2101. By July 1, 1995, the director of the department of community, trade, and economic development shall abolish the office of crime victims advocacy advisory committee.

NEW SECTION. Sec. 2102. A new section is added to chapter 43.63A RCW to read as follows:

The director of the department of community, trade, and economic development may establish ad hoc advisory committees, as necessary, to obtain advice and guidance regarding the office of crime victims advocacy program.

PART 22**HEALTH CARE ACCESS AND COST CONTROL COUNCIL**

Sec. 2201. RCW 43.70.010 and 1994 sp.s. c 7 s 206 are each amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

(1) "Assessment" means the regular collection, analysis, and sharing of information about health conditions, risks, and resources in a community. Assessment activities identify trends in illness, injury, and death and the factors that may cause these events. They also identify environmental risk factors, community concerns, community health resources, and the use of health services. Assessment includes gathering statistical data as well as conducting epidemiologic and other investigations and evaluations of health emergencies and specific ongoing health problems;

(2) "Board" means the state board of health;

(3) (~~"Council" means the health care access and cost control council;~~

~~(4))~~ "Department" means the department of health;

~~((5))~~ (4) "Policy development" means the establishment of social norms, organizational guidelines, operational procedures, rules, ordinances, or statutes that promote health or prevent injury, illness, or death; and

~~((6))~~ (5) "Secretary" means the secretary of health.

Sec. 2202. RCW 43.70.070 and 1989 1st ex.s. c 9 s 109 are each amended to read as follows:

The department shall evaluate and analyze readily available data and information to determine the outcome and effectiveness of health services, utilization of services, and payment methods. This section should not be construed as allowing the department access to proprietary information.

(1) The department shall make its evaluations available to the board (~~and the council~~) for use in preparation of the state health report required by RCW 43.20.050, and to consumers, purchasers, and providers of health care.

(2) The department (~~(, with advice from the council)~~) shall use the information to:

(a) Develop guidelines which may be used by consumers, purchasers, and providers of health care to encourage necessary and cost-effective services; and

(b) Make recommendations to the governor on how state government and private purchasers may be prudent purchasers of cost-effective, adequate health services.

Sec. 2203. RCW 70.170.020 and 1989 1st ex.s. c 9 s 502 are each amended to read as follows:

As used in this chapter:

~~((1)) ("Council" means the health care access and cost control council created by this chapter.~~

~~((2))~~ "Department" means department of health.

~~((3))~~ (2) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.

~~((4))~~ (3) "Secretary" means secretary of health.

~~((5))~~ (4) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third-party payer, as determined by the department.

~~((6))~~ (5) "Sliding fee schedule" means a hospital-determined, publicly available schedule of discounts to charges for persons deemed eligible for charity care; such schedules shall be established after consideration of guidelines developed by the department.

~~((7))~~ (6) "Special studies" means studies which have not been funded through the department's biennial or other legislative appropriations.

NEW SECTION. **Sec. 2204.** The following acts or parts of acts are each repealed:

(1) RCW 70.170.030 and 1989 1st ex.s. c 9 s 503; and

(2) RCW 70.170.040 and 1989 1st ex.s. c 9 s 504.

PART 23

COUNCIL ON VOLUNTEERISM AND CITIZEN SERVICE

Sec. 2301. RCW 43.150.030 and 1992 c 66 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) "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.

(2) "Center" means the state center for volunteerism and citizen service.

~~((3) "Council" means the Washington state council on volunteerism and citizen service.))~~

NEW SECTION. Sec. 2302. RCW 43.150.060 and 1992 c 66 s 6, 1987 c 505 s 39, 1985 c 110 s 1, & 1982 1st ex.s. c 11 s 6 are each repealed.

PART 24

COMMISSION ON EFFICIENCY AND ACCOUNTABILITY IN GOVERNMENT

NEW SECTION. Sec. 2401. The following acts or parts of acts are each repealed:

- (1) RCW 43.17.260 and 1987 c 480 s 1;
- (2) RCW 43.17.270 and 1987 c 480 s 2;
- (3) RCW 43.17.280 and 1987 c 480 s 3;
- (4) RCW 43.17.290 and 1987 c 480 s 4;
- (5) RCW 43.17.300 and 1987 c 480 s 5; and
- (6) 1991 c 53 s 1 & 1987 c 480 s 6 (uncodified).

PART 25

TECHNICAL ADVISORY COMMITTEE ON PUPIL TRANSPORTATION

Sec. 2501. RCW 46.61.380 and 1984 c 7 s 70 are each amended to read as follows:

The state superintendent of public instruction (~~(, by and with the advice of the state department of transportation and the chief of the Washington state patrol,))~~ shall adopt and enforce rules not inconsistent with the law of this state to govern the design, marking, and mode of operation of all school buses owned and operated by any school district or privately owned and operated under contract or otherwise with any school district in this state for the transportation of school children. Those rules shall by reference be made a part of any such contract or other agreement with the school district. Every school district, its officers and employees, and every person employed under contract or otherwise by a school district is subject to such rules. It is unlawful for any officer or employee of any school district or for any person operating any school bus under contract with any school district to violate any of the provisions of such rules.

PART 26

TRANSPORTATION IMPROVEMENT BOARD AND MULTIMODAL TRANSPORTATION PROGRAMS AND PROJECTS SELECTION COMMITTEE

Sec. 2601. RCW 82.44.180 and 1993 sp.s. c 23 s 64 and 1993 c 393 s 1 are each reenacted and 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 and activities and operations of the Washington state patrol not directly related to the policing of public highways and that are not authorized under Article II, section 40 of the state Constitution.

(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 appropriated to the ~~((department of))~~ transportation improvement board and allocated by the ~~((multimodal transportation programs and projects selection committee created in RCW 47.66.020))~~ transportation improvement board to public transportation projects within the 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 81.104.015;
- (d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020; and

(e) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources.

(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 appropriated to the ~~((department of))~~ transportation improvement board and allocated by the ~~((multimodal transportation programs and projects selection committee))~~ transportation improvement board 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 81.104.015;
- (d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;

(e) Other public transportation system-related roadway projects on state highways, county roads, or city streets; and

(f) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources.

Sec. 2602. RCW 81.104.090 and 1993 c 393 s 2 are each amended to read as follows:

The department of transportation shall be responsible for distributing amounts appropriated from the high capacity transportation account, which shall be allocated by the ~~((multimodal transportation programs and projects selection~~

~~committee))~~ department of transportation based on criteria in subsection (2) of this section. The department shall assemble and participate in a committee comprised of transit agencies eligible to receive funds from the high capacity transportation account for the purpose of reviewing fund applications.

(1) State high capacity transportation account funds may provide up to eighty percent matching assistance for high capacity transportation planning efforts.

(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.

(3) The department of transportation shall provide general review and monitoring of the system and project planning process prescribed in RCW 81.104.100.

Sec. 2603. RCW 47.26.121 and 1994 c 179 s 13 are each amended to read as follows:

(1) There is hereby created a transportation improvement board of ~~((eighteen))~~ twenty-one 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; (c) the assistant secretary for local programs of))~~ two representatives from the department of transportation; ((d-a)) (c) two representatives of ((a)) public transit systems; ((e)) (d) a private sector representative; ((and (f) a public member)) (e) a member representing the ports; (f) a member representing nonmotorized transportation; and (g) a member representing special needs transportation.

(2) Of the county members of the board, one shall be a county engineer or public works director; one shall be the executive director of the county road administration board; one shall be a county planning director or planning manager; one shall be a county executive, councilmember, or commissioner from 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 shall be a county executive, 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. 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 one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city with a population of twenty thousand 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; one shall be a mayor, commissioner, or city councilmember of a city with a population of twenty thousand 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 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) Of the transit members, at least one shall be a general manager, executive director, or transit director of a public transit system in an urban area with a population over two hundred thousand and at least one representative from a rural or small urban transit system in an area with a population less than two hundred thousand.

(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) The port member shall be a commissioner or senior staff person of a public port.

(8) The nonmotorized transportation member shall be a citizen with a demonstrated interest and involvement with a nonmotorized transportation group.

(9) The specialized transportation member shall be a citizen with a demonstrated interest and involvement with a state-wide specialized needs transportation group.

(10) Appointments of county, city, Washington department of transportation, transit, port, nonmotorized transportation, special needs transportation, private sector, and public representatives shall be made by the secretary of the department of transportation. 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 members, and the Washington public ports association for the port member. The private sector ~~((and))~~, public, nonmotorized transportation, and special needs 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, nonmotorized transportation, special needs transportation, 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, nonmotorized transportation, special needs transportation, or public member resigns or is unable or unwilling to serve.

~~((8))~~ (11) 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.

~~((9))~~ (12) The board shall elect a chair from among its members for a two-year term.

~~((10))~~ (13) Expenses of the board shall be paid in accordance with RCW 47.26.140.

~~((11))~~ (14) 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.

Sec. 2604. RCW 47.66.030 and 1993 c 393 s 5 are each amended to read as follows:

(1)(a) The ~~((multimodal transportation programs and projects selection committee))~~ transportation improvement board 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))~~ board 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))~~ board, including administrative expenses for managing the program, shall be paid ~~((from the transportation fund))~~ in accordance with RCW 47.26.140.

~~((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.))~~

Sec. 2605. RCW 47.26.140 and 1994 c 179 s 14 are each amended to read as follows:

The transportation improvement board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board, and may employ additional staff as it deems appropriate. All costs associated with staff, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060, shall be paid from the urban arterial trust account, small city account, city hardship assistance account, transportation fund, and the transportation improvement account in the motor vehicle fund as determined by the biennial appropriation.

Sec. 2606. RCW 47.66.040 and 1993 c 393 s 6 are each amended to read as follows:

(1) The ~~((multimodal transportation programs and projects selection committee))~~ transportation improvement board 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))~~ board 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))~~ board, and safety and security issues.

(3) The ~~((committee))~~ board shall determine the appropriate level of local match required for each program and project based on the source of funds.

Sec. 2607. RCW 47.26.160 and 1994 c 179 s 15 are each amended to read as follows:

The transportation improvement board shall:

(1) Adopt rules necessary to implement the provisions of chapter 47.66 RCW and this chapter relating to the allocation of funds;

(2) Adopt reasonably uniform design standards for city and county arterials.

NEW SECTION. **Sec. 2608.** The following acts or parts of acts are each repealed:

- (1) RCW 47.66.020 and 1993 c 393 s 4;

(2) RCW 47.66.050 and 1993 c 393 s 7; and

(3) RCW 47.66.060 and 1993 c 393 s 8.

PART 27

OVERSIGHT COMMITTEE ON LONGSHOREMAN'S AND HARBOR WORKER'S COMPENSATION COVERAGE

NEW SECTION. **Sec. 2701.** The following acts or parts of acts are each repealed:

(1) RCW 48.22.071 and 1992 c 209 s 3; and

(2) RCW 48.22.072 and 1993 c 177 s 2 & 1992 c 209 s 4.

PART 28

BOARD OF ADVISORS FOR SOLID WASTE INCINERATOR AND LANDFILL OPERATOR CERTIFICATION

Sec. 2801. RCW 70.95D.010 and 1989 c 431 s 65 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 board of advisors for solid waste incinerator and landfill operator certification established by RCW 70.95D.050.~~)

(2)) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

((3)) (2) "Department" means the department of ecology.

((4)) (3) "Director" means the director of ecology.

((5)) (4) "Incinerator" means a facility which has the primary purpose of burning or which is designed with the primary purpose of burning solid waste or solid waste derived fuel, but excludes facilities that have the primary purpose of burning hog fuel.

((6)) (5) "Landfill" means a landfill as defined under RCW 70.95.030.

((7)) (6) "Owner" means, in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chief elected official of the county legislative authority or the chief elected official's designee; in the case of a board of public utilities, association, municipality, or other public body, the president or chief elected official of the body or the president's or chief elected official's designee; in the case of a privately owned landfill or incinerator, the legal owner.

((8)) (7) "Solid waste" means solid waste as defined under RCW 70.95.030.

Sec. 2802. RCW 70.95D.060 and 1989 c 431 s 70 are each amended to read as follows:

(1) The director may(~~(, with the recommendation of the board and after a hearing before the board,))~~ revoke a certificate:

(a) If it were found to have been obtained by fraud or deceit;

(b) For gross negligence in the operation of a solid waste incinerator or landfill;

(c) For violating the requirements of this chapter or any lawful rule or order of the department; or

(d) If the facility operated by the certified employee is operated in violation of state or federal environmental laws.

(2) A person whose certificate is revoked under this section shall not be eligible to apply for a certificate for one year from the effective date of the final order (~~(or-~~off~~)~~) of revocation.

NEW SECTION. Sec. 2803. RCW 70.95D.050 and 1989 c 431 s 69 are each repealed.

NEW SECTION. Sec. 2804. A new section is added to chapter 70.95D RCW to read as follows:

The director may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance on the certification of solid waste incinerator and landfill operators.

PART 29

**WATER AND WASTEWATER OPERATOR CERTIFICATION
BOARD OF EXAMINERS**

Sec. 2901. RCW 70.95B.020 and 1987 c 357 s 1 are each amended to read as follows:

As used in this chapter unless context requires another meaning:

(1) "Director" means the director of the department of ecology.

(2) "Department" means the department of ecology.

(3) (~~"Board" means the water and wastewater operator certification board of examiners established by RCW 70.95B.070.~~

(4)) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(~~(5))~~ (4) "Wastewater treatment plant" means a facility used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial or industrial origin, and which by its design requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single family residence, septic tanks with subsoil absorption, industrial wastewater treatment plants, or wastewater collection systems.

(~~(6))~~ (5) "Operator in responsible charge" means an individual who is designated by the owner as the person on-site in responsible charge of the routine operation of a wastewater treatment plant.

(~~(7))~~ (6) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between

state programs and assists authorities in establishing new certification programs and updating existing ones.

~~((8))~~ (7) "Wastewater collection system" means any system of lines, pipes, manholes, pumps, liftstations, or other facilities used for the purpose of collecting and transporting wastewater.

~~((9))~~ (8) "Operating experience" means routine performance of duties, on-site in a wastewater treatment plant, that affects plant performance or effluent quality.

~~((10))~~ (9) "Owner" means in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chairman of the county legislative authority or the chairman's designee; in the case of a sewer district, board of public utilities, association, municipality or other public body, the president or chairman of the body or the president's or chairman's designee; in the case of a privately owned wastewater treatment plant, the legal owner.

~~((11))~~ (10) "Wastewater certification program coordinator" means an employee of the department ~~((who is appointed by the director to serve on the board and))~~ who administers the wastewater treatment plant operators' certification program.

Sec. 2902. RCW 70.95B.040 and 1987 c 357 s 3 are each amended to read as follows:

The director~~((with the approval of the board,))~~ shall adopt and enforce such rules and regulations as may be necessary for the administration of this chapter. The rules and regulations shall include, but not be limited to, provisions for the qualification and certification of operators for different classifications of wastewater treatment plants.

Sec. 2903. RCW 70.95B.100 and 1973 c 139 s 10 are each amended to read as follows:

The director may, ~~((with the recommendation of the board and after a hearing before the same))~~ after conducting a hearing, revoke a certificate found to have been obtained by fraud or deceit, or for gross negligence in the operation of a waste treatment plant, or for violating the requirements of this chapter or any lawful rule, order or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of this final order or revocation.

Sec. 2904. RCW 70.119.020 and 1991 c 305 s 2 are each amended to read as follows:

As used in this chapter unless context requires another meaning:

(1) ~~((“Board” means the board established pursuant to RCW 70.95B.070 which shall be known as the water and waste water operator certification board of examiners.~~

~~((2))~~ (2) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

~~((3))~~ (2) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water district, municipality, public or private corporation, company, institution, person, or the state of Washington and who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

~~((4))~~ (3) "Department" means the department of health.

~~((5))~~ (4) "Distribution system" means that portion of a public water system which stores, transmits, pumps and distributes water to consumers.

~~((6))~~ (5) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

~~((7))~~ (6) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. Group A water system does not include a system serving fewer than fifteen single-family residences, regardless of the number of people.

~~((8))~~ (7) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

~~((9))~~ (8) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

~~((10))~~ (9) "Purification plant" means that portion of a public water system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

~~((11))~~ (10) "Secretary" means the secretary of the department of health.

~~((+2))~~ (11) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

~~((+3))~~ (12) "Surface water" means all water open to the atmosphere and subject to surface runoff.

Sec. 2905. RCW 70.119.050 and 1983 c 292 s 4 are each amended to read as follows:

The secretary shall adopt~~((, with the approval of the board,))~~ such rules and regulations as may be necessary for the administration of this chapter and shall enforce such rules and regulations. The rules and regulations shall include provisions establishing minimum qualifications and procedures for the certification of operators, criteria for determining the kind and nature of continuing educational requirements for renewal of certification under RCW 70.119.100(2), and provisions for classifying water purification plants and distribution systems.

Rules and regulations adopted under the provisions of this section shall be adopted in accordance with the provisions of chapter 34.05 RCW.

Sec. 2906. RCW 70.119.110 and 1991 c 305 s 7 are each amended to read as follows:

The secretary may~~((, with the recommendation of the board and after hearing before the same,))~~ after conducting a hearing revoke a certificate found to have been obtained by fraud or deceit; or for gross negligence in the operation of a purification plant or distribution system; or for an intentional violation of the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation.

NEW SECTION. Sec. 2907. The following acts or parts of acts are each repealed:

(1) RCW 70.95B.070 and 1984 c 287 s 106, 1975-'76 2nd ex.s. c 34 s 161, & 1973 c 139 s 7; and

(2) RCW 70.119.080 and 1983 c 292 s 6 & 1977 ex.s. c 99 s 8.

NEW SECTION. Sec. 2908. A new section is added to chapter 70.95B RCW to read as follows:

The director, in cooperation with the secretary of health, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the examination and certification of operators of wastewater treatment plants.

NEW SECTION. Sec. 2909. A new section is added to chapter 70.119 RCW to read as follows:

The secretary, in cooperation with the director of ecology, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance

regarding the development of rules implementing this chapter and on the examination and certification of operators of water systems.

**PART 30
TWIN RIVERS CORRECTIONS CENTER
VOLUNTEER ADVISORY COMMITTEE**

NEW SECTION. **Sec. 3001.** By July 1, 1995, the secretary of the department of corrections shall abolish the twin rivers corrections center volunteer advisory committee.

**PART 31
SEA URCHIN AND SEA CUCUMBER ADVISORY REVIEW BOARDS**

Sec. 3101. RCW 75.30.050 and 1994 sp.s. c 9 s 807 and 1994 c 260 s 18 are each reenacted and 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 commercial crab fishing industry in cases involving Dungeness crab—Puget Sound fishery licenses;

(b) The commercial herring fishery in cases involving herring fishery licenses;

(c) The commercial sea urchin and sea cucumber fishery in cases involving sea urchin and sea cucumber dive fishery licenses;

~~(d) ((The commercial sea cucumber fishery in cases involving sea cucumber dive fishery licenses;~~

~~(e))~~ (e)) The commercial ocean pink shrimp industry (*Pandalus jordani*) in cases involving ocean pink shrimp delivery licenses; and

~~((f))~~ (e) The commercial coastal crab fishery in cases involving Dungeness crab—coastal fishery licenses and Dungeness crab—coastal class B fishery licenses. The members shall include one person from the commercial crab processors, one Dungeness crab—coastal fishery license holder, and one citizen representative of a coastal community.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050, 43.03.060, and 43.03.065.

**PART 32
ADVISORY BOARD FOR THE PURCHASE OF
FISHING VESSELS AND LICENSES**

Sec. 3201. RCW 75.44.140 and 1983 1st ex.s. c 46 s 159 are each amended to read as follows:

The director shall adopt rules for the administration of the program. To assist the department in the administration of the program, the director may contract with persons not employed by the state and may enlist the aid of other state agencies.

~~((The director shall appoint an advisory board composed of five individuals who are knowledgeable of the commercial fishing industry to advise the director concerning the values of licenses and permits. Advisory board members shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.))~~

PART 33

RAIL DEVELOPMENT COMMISSION

NEW SECTION. Sec. 3301. The following acts or parts of acts are each repealed:

- (1) RCW 81.62.010 and 1987 c 429 s 1;
- (2) RCW 81.62.020 and 1987 c 429 s 2;
- (3) RCW 81.62.030 and 1987 c 429 s 3;
- (4) RCW 81.62.040 and 1987 c 429 s 4;
- (5) RCW 81.62.050 and 1987 c 429 s 5;
- (6) RCW 81.62.060 and 1987 c 429 s 6;
- (7) RCW 81.62.900 and 1987 c 429 s 7; and
- (8) RCW 81.62.901 and 1987 c 429 s 8.

PART 34

MARINE OVERSIGHT BOARD

NEW SECTION. Sec. 3401. RCW 90.56.450 and 1992 c 73 s 40 & 1991 c 200 s 501 are each repealed.

PART 35

INTERAGENCY COORDINATING COMMITTEE FOR PUGET SOUND AMBIENT MONITORING PROGRAM

Sec. 3501. RCW 90.70.065 and 1994 c 264 s 98 are each amended to read as follows:

(1) In addition to other powers and duties specified in this chapter, the authority shall ensure implementation and coordination of the Puget Sound ambient monitoring program established in the plan under RCW 90.70.060(12). The program shall:

- (a) Develop a baseline and examine differences among areas of Puget Sound, for environmental conditions, natural resources, and contaminants in seafood, against which future changes can be measured;
- (b) Take measurements relating to specific program elements identified in the plan;
- (c) Measure the progress of the ambient monitoring programs implemented under the plan;
- (d) Provide a permanent record of significant natural and human-caused changes in key environmental indicators in Puget Sound; and
- (e) Help support research on Puget Sound.

~~(2) ((To ensure proper coordination of the ambient monitoring program, the authority may establish an interagency coordinating committee consisting of representatives from the departments of ecology, fish and wildlife, natural~~

~~resources, and health, and such federal, local, tribal, and other organizations as are necessary to implement the program.~~

(3)) Each state agency with responsibilities for implementing the Puget Sound ambient monitoring program, as specified in the plan, shall participate in the program.

PART 36 MISCELLANEOUS

NEW SECTION. **Sec. 3601.** Part headings as used in this act do not constitute any part of the law.

NEW SECTION. **Sec. 3602.** 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. 3603.** Section 301 of this act shall take effect June 30, 1997.

NEW SECTION. **Sec. 3604.** Sections 101, 201, 302, 303, 401, 402, 501 through 505, 601, 701, 801, 901, 1001, 1101, 1201 through 1203, 1301, 1302, 1401 through 1407, 1501, 1601, 1701, 1801, 1901, 1902, 2001, 2101, 2102, 2201 through 2204, 2301, 2302, 2401, 2501, 2601 through 2608, 2701, 2801 through 2804, 2901 through 2909, 3001, 3101, 3201, 3301, 3401, and 3501 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, 1995.

Passed the House April 23, 1995.

Passed the Senate April 22, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 270

[Engrossed House Bill 1173]

ADOPTION SUPPORT

AN ACT Relating to adoption support; amending RCW 74.13.118, 74.13.121, 26.33.110, 26.33.310, and 26.33.260; adding a new section to chapter 26.33 RCW; and creating new sections. Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** The legislature finds that it is in the best interest of the people of the state of Washington to support the adoption process in a variety of ways, including easing administrative burdens on adoptive parents receiving financial support, providing finality for adoptive placements and stable homes for children, and not delaying adoptions.

Sec. 2. RCW 74.13.118 and 1985 c 7 s 138 are each amended to read as follows:

At least ~~((annually))~~ once every five years, the secretary shall review the need of any adoptive parent or parents receiving continuing support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145, or the need of any parent who is to receive more than one lump sum payment where such payments are to be spaced more than one year apart. ~~((Such review shall be made not later than the anniversary date of the adoption support agreement.))~~

At the time of such ~~((annual))~~ review and at other times ~~((during the year))~~ when changed conditions, including variations in medical opinions, prognosis and costs, are deemed by the secretary to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child, in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance.

Any parent who is a party to such an agreement may at any time in writing request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his rights under the hearing provisions set forth in RCW 74.13.127.

Sec. 3. RCW 74.13.121 and 1985 c 7 s 139 are each amended to read as follows:

So long as any adoptive parent is receiving support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 he or she shall, ~~((not later than two weeks after it is filed with the United States government))~~ upon request, file with the secretary a copy of his or her federal income tax return. Such return and any information thereon shall be marked by the secretary "confidential", shall be used by the secretary solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution or agency, public or private, including agencies of the United States government, other than a superior court, judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending.

In carrying on the review process authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may require the adoptive parent or parents to disclose such additional financial information, not privileged, as may enable him or her to make determinations and adjustments in support to the end that the purposes and policies of this state expressed in RCW 74.13.100 may be carried out, provided that no adoptive parent or parents shall be obliged, by virtue of this section, to sign any agreement or other writing waiving any constitutional right or privilege nor to admit to his or her home any agent,

employee, or official of any department of this state, or of the United States government.

Such information shall be marked "confidential" by the secretary, shall be used by him or her solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution, or agency, public or private, including agencies of the United States government other than a superior court judge or commission before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending.

NEW SECTION. Sec. 4. The legislature recognizes that some prospective adoptive parents may not have finalized the adoption of a foster child in their care because the adoption support program as it is presently structured may offer special children with complex needs fewer necessary services than the foster care program provides them through exceptional cost plans. Enhancement of the adoption support program could increase the likelihood that such special needs children could be adopted.

The department of social and health services is directed to conduct a study to determine the costs, program impact, and appropriateness of extending exceptional cost rate foster care plans for special needs children to the adoption support program. The department of social and health services shall complete the study and report its findings to the legislature no later than September 1, 1995.

Sec. 5. RCW 26.33.110 and 1987 c 170 s 5 are each amended to read as follows:

(1) The court shall set a time and place for a hearing on the petition for termination of the parent-child relationship, which shall not be held sooner than forty-eight hours after the child's birth. However, if the child is an Indian child, the hearing shall not be held sooner than ten days after the child's birth and the time of the hearing shall be extended up to twenty additional days from the date of the scheduled hearing upon the motion of the parent, Indian custodian, or the child's tribe.

(2) Notice of the hearing shall be served on the petitioner, the nonconsenting parent or alleged father, the legal guardian of a party, and the guardian ad litem of a party, in the manner prescribed by RCW 26.33.310. If the child is an Indian child, notice of the hearing shall also be served on the child's tribe in the manner prescribed by 25 U.S.C. Sec. 1912(a).

(3) Except as otherwise provided in this section, the notice of the petition shall:

(a) State the date and place of birth. If the petition is filed prior to birth, the notice shall state the approximate date and location of conception of the child and the expected date of birth, and shall identify the mother;

(b) Inform the nonconsenting parent or alleged father that: (i) He or she has a right to be represented by counsel and that counsel will be appointed for an

indigent person who requests counsel; and (ii) failure to respond to the termination action within twenty days of service if served within the state or thirty days if served outside of this state, will result in the termination of his or her parent-child relationship with respect to the child;

(c) Inform an alleged father that failure to file a claim of paternity under chapter 26.26 RCW or to respond to the petition, within twenty days of the date of service of the petition is grounds to terminate his parent-child relationship with respect to the child;

(d) Inform an alleged father of an Indian child that if he acknowledges paternity of the child or if his paternity of the child is established prior to the termination of the parent-child relationship, that his parental rights may not be terminated unless he: (i) Gives valid consent to termination, or (ii) his parent-child relationship is terminated involuntarily pursuant to chapter 26.33 or 13.34 RCW.

Sec. 6. RCW 26.33.310 and 1987 c 170 s 9 are each amended to read as follows:

(1) Petitions governed by this chapter shall be served in the ~~((same))~~ manner as ~~((a complaint in a civil action under))~~ set forth in the superior court civil rules. Subsequent notice, papers, and pleadings may be served in the manner provided in superior court civil rules.

(2) If personal service on any parent or alleged father who has not consented to the termination of his or her parental rights can be given, the summons and notice of hearing on the petition to terminate parental rights shall be served at least twenty days before the hearing date if served within the state or thirty days if served outside of this state.

(3) If personal service on the parent or any alleged father, either within or without this state, cannot be given, notice shall be given: (a) By first class and registered mail, mailed at least ~~((twenty))~~ thirty days before the hearing to the person's last known address; and (b) by publication at least once a week for three consecutive weeks with the first publication date at least ~~((twenty-five))~~ thirty days before the hearing. Publication shall be in a legal newspaper in the city or town of the last known address within the United States and its territories of the parent or alleged father, whether within or without this state, or, if no address is known to the petitioner, publication shall be in the city or town of the last known whereabouts within the United States and its territories; or if no address or whereabouts are known to the petitioner or the last known address is not within the United States and its territories, in the city or town where the proceeding has been commenced.

~~((3))~~ (4) Notice and appearance may be waived by the department, an agency, a parent, or an alleged father before the court or in a writing signed under penalty of perjury. The waiver shall contain the current address of the department, agency, parent, or alleged father. The face of the waiver for a hearing on termination of the parent-child relationship shall contain language explaining the meaning and consequences of the waiver and the meaning and

consequences of termination of the parent-child relationship. A person or agency who has executed a waiver shall not be required to appear except in the case of an Indian child where consent to termination or adoption must be certified before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a).

~~((4))~~ (5) If a person entitled to notice is known to the petitioner to be unable to read or understand English, all notices, if practicable, shall be given in that person's native language or through an interpreter.

~~((5))~~ (6) Where notice to an Indian tribe is to be provided pursuant to this chapter and the department is not a party to the proceeding, notice shall be given to the tribe at least ten business days prior to the hearing by registered mail return receipt requested.

Sec. 7. RCW 26.33.260 and 1984 c 155 s 26 are each amended to read as follows:

(1) The entry of a decree of adoption divests any parent or alleged father who is not married to the adoptive parent or who has not joined in the petition for adoption of all legal rights and obligations in respect to the adoptee, except past-due child support obligations. The adoptee shall be free from all legal obligations of obedience and maintenance in respect to the parent. The adoptee shall be, to all intents and purposes, and for all legal incidents, the child, legal heir, and lawful issue of the adoptive parent, entitled to all rights and privileges, including the right of inheritance and the right to take under testamentary disposition, and subject to all the obligations of a natural child of the adoptive parent.

(2) Any appeal of an adoption decree shall be decided on an accelerated review basis.

(3) Except as otherwise provided in RCW 26.33.160(3) and (4)(h), no person may challenge an adoption decree on the grounds of:

(a) A person claiming or alleging paternity subsequently appears and alleges lack of prior notice of the proceeding; or

(b) The adoption proceedings were in any other manner defective.

(4) It is the intent of the legislature that this section provide finality for adoptive placements and stable homes for children.

NEW SECTION. Sec. 8. A new section is added to chapter 26.33 RCW to read as follows:

An adoption shall not be delayed or denied on the basis of the race, color, or national origin of the adoptive parent or the child involved. However, when the department or an agency considers whether a placement option is in a child's best interests, the department or agency may consider the cultural, ethnic, or racial background of the child and the capacity of prospective adoptive parents to meet the needs of a child of this background. This provision shall not apply to or affect the application of the Indian Child Welfare Act of 1978, 25 U.S.C. Sec. 1901 et seq.

Passed the House April 23, 1995.
Passed the Senate April 23, 1995.
Approved by the Governor May 9, 1995.
Filed in Office of Secretary of State May 9, 1995.

CHAPTER 271

[House Bill 1193]

TRANSPORTATION CAPITAL FACILITIES ACCOUNT—ELIMINATION OF RENTAL RATES REQUIREMENTS

AN ACT Relating to the transportation capital facilities account; and amending RCW 47.13.020.

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

Sec. 1. RCW 47.13.020 and 1989 c 397 s 2 are each amended to read as follows:

~~((By July 1, 1991, the department shall set and charge reasonable rental rates for the use of its real property, buildings, or structures. The department shall deposit receipts from the charges in the transportation capital facilities account.))~~

The department may transfer to the transportation capital facilities account all federal moneys made available for the purpose of purchase, acquisition, exchange, sale, construction, repair, replacement, maintenance, or operation of real property, buildings, or structures necessary or convenient for the planning, design, construction, operation, maintenance, or administration of the state transportation system under the jurisdiction of the department.

Passed the House April 19, 1995.
Passed the Senate April 10, 1995.
Approved by the Governor May 9, 1995.
Filed in Office of Secretary of State May 9, 1995.

CHAPTER 272

[Engrossed Substitute House Bill 1209]

COMMERCIAL VEHICLE SAFETY ENFORCEMENT BY WASHINGTON STATE PATROL

AN ACT Relating to commercial vehicle safety enforcement by the Washington state patrol; amending RCW 81.80.330; adding new sections to chapter 46.32 RCW; creating a new section; repealing RCW 81.80.145; prescribing penalties; 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 46.32 RCW to read as follows:

(1) The Washington state patrol is responsible for enforcement of safety requirements for commercial motor vehicles, including but not limited to terminal safety audits. Those carriers that have terminal operations in this state are subject to the patrol's terminal safety audits.

(2) This section does not apply to:

(a) Motor vehicles 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 disposal; or supplies or commodities to be used on the farm, orchard, or dairy;

(b) Commercial motor carriers subject to economic regulation under chapters 81.68 (auto transportation companies), 81.70 (passenger charter carriers), 81.77 (solid waste collection companies), 81.80 (motor freight carriers), and 81.90 (limousine charter carriers) RCW; and

(c) Vehicles exempted from registration by RCW 46.16.020.

NEW SECTION. Sec. 2. A new section is added to chapter 46.32 RCW to read as follows:

The department shall collect a fee of ten dollars, in addition to all other fees and taxes, for each motor vehicle base plated in the state of Washington that is subject to highway inspections and terminal audits under section 1 of this act, at the time of registration and renewal of registration under chapter 46.16 or 46.87 RCW. Refunds will not be provided for fees paid under this section when the vehicle is no longer subject to section 1 of this act. The department may deduct an amount equal to the cost of administering the program. All remaining fees shall be deposited with the state treasurer and credited to the state patrol highway account of the motor vehicle fund.

NEW SECTION. Sec. 3. A new section is added to chapter 46.32 RCW to read as follows:

In addition to all other penalties provided by law, a commercial motor vehicle that is subject to terminal safety audits under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

The penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the patrol describing the violation and advising the person that the penalty is due. The patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue a prosecution to recover the penalty upon such terms it deems proper and may ascertain the facts upon all such applications in such manner and under such rules as it deems proper. If the amount of the penalty is not paid to the patrol within fifteen days after receipt of the notice imposing the penalty, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the application, the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which the violator does business, to recover the penalty. In all such actions the procedure and rules of evidence are the same as an

ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund.

NEW SECTION. Sec. 4. (1) All powers, duties, and functions of the utilities and transportation commission pertaining to safety inspections of commercial vehicles, including but not limited to terminal safety audits, except for those carriers subject to the economic regulation of the commission, are transferred to the Washington state patrol.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the Washington state patrol. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the utilities and transportation commission in carrying out the powers, functions, and duties transferred shall be made available to the Washington state patrol. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the Washington state patrol.

(b) Any appropriations made to the utilities and transportation commission for carrying out the powers, functions, and duties transferred shall, on the effective date of this act, be transferred and credited to the Washington state patrol.

(c) 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.

(3) All employees of the utilities and transportation commission engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the Washington state patrol. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state patrol 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. These employees will only be transferred upon successful completion of the Washington state patrol background investigation.

(4) All rules and all pending business before the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the Washington state patrol. All existing contracts and obligations remain in full force and shall be performed by the Washington state patrol.

(5) The transfer of the powers, duties, functions, and personnel of the utilities and transportation commission does not affect the validity of any act performed before the effective date of this act.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, 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.

(7) Nothing contained in this section alters an existing collective bargaining unit or the provisions of an 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. 5. RCW 81.80.330 and 1980 c 132 s 3 are each amended to read as follows:

The commission is hereby empowered to administer and enforce all provisions of this chapter and to inspect the vehicles, books, and documents of all "motor carriers" and the books, documents, and records of those using the service of the carriers for the purpose of discovering all discriminations and rebates and other information pertaining to the enforcement of this chapter and shall prosecute violations thereof. The commission shall employ such auditors, inspectors, clerks, and assistants as it may deem necessary for the enforcement of this chapter (~~(, and it shall be the duty of)~~). The Washington state patrol (~~(to assist in the enforcement of)~~) shall perform all motor carrier safety inspections required by this chapter, (~~(and the duty of)~~) including terminal safety audits, except for (1) those carriers subject to the economic regulation of the commission, or (2) a vehicle owned or operated by a carrier affiliated with a solid waste company subject to economic regulation by the commission. The attorney general (~~(to)~~) shall assign at least one assistant to the exclusive duty of assisting the commission in the enforcement of this chapter, and the prosecution of persons charged with the violation thereof. It shall be the duty of the Washington state patrol and the sheriffs of the counties to make arrests and the county attorneys to prosecute violations of this chapter.

NEW SECTION. **Sec. 6.** RCW 81.80.145 and 1993 c 359 s 1 are each repealed.

NEW SECTION. **Sec. 7.** Section 2 of this act becomes effective with motor vehicle registration fees due or to become due January 1, 1996. Sections 1 and 3 through 6 of this act take effect January 1, 1996.

Passed the House April 22, 1995.

Passed the Senate April 20, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 273

[Engrossed Substitute House Bill 1730]

INTEREST ARBITRATION FOR LAW ENFORCEMENT OFFICERS

AN ACT Relating to interest arbitration for law enforcement officers employed by cities, towns, or counties; amending RCW 41.56.465; reenacting and amending RCW 41.56.030; creating a new section; repealing RCW 41.56.460; 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 1993 c 398 s 1, 1993 c 397 s 1, and 1993 c 379 s 302 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, 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: (i) Law enforcement officers as defined in RCW 41.26.030 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; (ii) fire fighters as that term is defined in RCW 41.26.030; (iii) 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; (iv) security forces established under RCW 43.52.520; (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.~~

~~(b) Beginning on July 1, 1995,)~~ "Uniformed personnel" means: (a)(i) Until July 1, 1997, 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) beginning on July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) 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; ((+ii)) (c) 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; ((+iv)) (d) security forces established under RCW 43.52.520; ((+v)) (e) fire fighters as that term is defined in RCW 41.26.030; ((+vi)) (f) 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; ((+vii)) (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or ((+viii)) (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washing-

ton University, Western Washington University, The Evergreen State College, and the various state community colleges.

Sec. 2. RCW 41.56.465 and 1993 c 398 s 3 are each amended to read as follows:

(1) 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))~~ (a) The constitutional and statutory authority of the employer;

~~((2))~~ (b) Stipulations of the parties;

~~((3))~~(a) (c)(i) For employees listed in RCW 41.56.030(7)(~~((b))~~(i)) (a) through ~~((iii))~~ (d), 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))~~ (ii) For employees listed in RCW 41.56.030(7)(~~((b))~~(iv)) (e) through ~~((vii))~~ (h), 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))~~ (d) The average consumer prices for goods and services, commonly known as the cost of living;

~~((5))~~ (e) Changes in any of the circumstances under ~~((subsections 1))~~ (a) through ~~((4))~~ (d) of this ~~((section))~~ subsection during the pendency of the proceedings; and

~~((6))~~ (f) Such other factors, not confined to the factors under ~~((subsections 1))~~ (a) through ~~((5))~~ (e) of this ~~((section))~~ subsection, 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)) (a) 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.

(2) Subsection (1)(c) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW.

NEW SECTION. **Sec. 3.** The senate committee on ways and means and the house of representatives committee on appropriations shall jointly compile a report to the legislature by December 15, 1996, which shall analyze and review all arbitration awards made involving law enforcement officers under chapter

41.56 RCW since enactment of binding arbitration procedures for law enforcement officers in 1973. This review shall include a brief procedural history of each arbitration including the date, the identity of the parties, the evidence and arguments presented by the parties, the names of the members of the arbitration panel, and the findings and final determination of the issues in dispute.

NEW SECTION. Sec. 4. RCW 41.56.460 and 1993 c 517 s 10, 1993 c 502 s 5, 1993 c 398 s 2, & 1993 c 397 s 2 are each repealed.

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, 1995.

Passed the House April 20, 1995.

Passed the Senate April 15, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 274

[House Bill 1225]

LICENSES—REVISION OF PROVISIONS FOR VEHICLES, FUEL TAXES

AN ACT Relating to licenses; amending RCW 46.12.030, 82.08.0287, 35A.82.010, 47.02.160, 47.10.793, 47.10.804, 47.10.815, 47.10.822, 47.10.829, 47.26.424, 47.26.4252, 47.26.4254, 47.26.504, 47.56.749, 47.56.750, 47.56.771, 47.60.580, 47.60.806, 82.36.010, 82.38.120, 82.38.140, 82.38.150, 82.38.170, 82.38.260, and 82.41.040; and repealing RCW 82.37.010, 82.37.020, 82.37.030, 82.37.040, 82.37.050, 82.37.060, 82.37.070, 82.37.080, 82.37.090, 82.37.100, 82.37.110, 82.37.120, 82.37.130, 82.37.140, 82.37.145, 82.37.150, 82.37.160, 82.37.170, 82.37.175, 82.37.180, 82.37.190, 82.37.900, 82.37.910, and 82.37.920.

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

Sec. 1. RCW 46.12.030 and 1990 c 238 s 1 are each amended to read as follows:

The application for certificate of ownership shall be upon a ((blank)) form ((to be)) furnished or approved by the department and shall contain:

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

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

(3) Such other information as the department may require. The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either. A physical examination of the vehicle is mandatory if it previously was registered in any other state or country. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the foreign title and registration certificate.

If the vehicle is from a jurisdiction that does not issue titles, the inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the registration certificate. The inspection must also confirm that the license plates on the vehicle are those assigned to the vehicle by the jurisdiction in which the vehicle was previously licensed. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

The application shall be subscribed by the registered owner and be sworn to by that applicant in the manner described by RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form.

Sec. 2. RCW 82.08.0287 and 1993 c 488 s 2 are each amended to read as follows:

The tax imposed by this chapter shall not apply to sales of passenger motor vehicles which are to be used as ride-sharing vehicles, as defined in RCW 46.74.010(3), by not less than five persons, including the driver, with a gross vehicle weight not to exceed 10,000 pounds where the primary usage is for commuter ride-sharing, as defined in RCW 46.74.010(1), or by not less than four persons including the driver when at least two of those persons are confined to wheelchairs when riding, or passenger motor vehicles where the primary usage is for ride-sharing for the elderly and the handicapped, as defined in RCW 46.74.010(2), if the ride-sharing vehicles are exempt under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption under this section. If used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner of one of these vehicles shall notify the department of revenue upon termination of primary use of the vehicle as a ride-sharing vehicle and is liable for the tax imposed by this chapter.

To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (1) The vehicle must be operated by a public transportation agency for the general public; or (2) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (3) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to

a carpool/vanpool element contained within their commute trip reduction program.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

- (1) RCW 82.37.010 and 1963 ex.s. c 22 s 1;
- (2) RCW 82.37.020 and 1993 c 54 s 5, 1983 c 3 s 223, 1979 c 158 s 225, 1965 c 67 s 1, & 1963 ex.s. c 22 s 2;
- (3) RCW 82.37.030 and 1983 1st ex.s. c 49 s 29, 1977 ex.s. c 317 s 4, 1967 ex.s. c 83 s 4, & 1963 ex.s. c 22 s 3;
- (4) RCW 82.37.040 and 1963 ex.s. c 22 s 4;
- (5) RCW 82.37.050 and 1963 ex.s. c 22 s 5;
- (6) RCW 82.37.060 and 1965 c 67 s 2 & 1963 ex.s. c 22 s 6;
- (7) RCW 82.37.070 and 1963 ex.s. c 22 s 7;
- (8) RCW 82.37.080 and 1963 ex.s. c 22 s 8;
- (9) RCW 82.37.090 and 1963 ex.s. c 22 s 9;
- (10) RCW 82.37.100 and 1963 ex.s. c 22 s 10;
- (11) RCW 82.37.110 and 1963 ex.s. c 22 s 11;
- (12) RCW 82.37.120 and 1963 ex.s. c 22 s 12;
- (13) RCW 82.37.130 and 1963 ex.s. c 22 s 13;
- (14) RCW 82.37.140 and 1965 c 67 s 3 & 1963 ex.s. c 22 s 14;
- (15) RCW 82.37.145 and 1965 c 67 s 5;
- (16) RCW 82.37.150 and 1965 c 67 s 4 & 1963 ex.s. c 22 s 15;
- (17) RCW 82.37.160 and 1967 ex.s. c 89 s 7 & 1963 ex.s. c 22 s 16;
- (18) RCW 82.37.170 and 1963 ex.s. c 22 s 17;
- (19) RCW 82.37.175 and 1982 c 161 s 13;
- (20) RCW 82.37.180 and 1963 ex.s. c 22 s 18;
- (21) RCW 82.37.190 and 1974 ex.s. c 28 s 2;
- (22) RCW 82.37.900 and 1963 ex.s. c 22 s 22;
- (23) RCW 82.37.910 and 1963 ex.s. c 22 s 23; and
- (24) RCW 82.37.920 and 1963 ex.s. c 22 s 24.

Sec. 4. RCW 35A.82.010 and 1985 c 7 s 102 are each amended to read as follows:

A code city shall collect, receive and share in the distribution of state collected and distributed excise taxes to the same extent and manner as general laws relating thereto apply to any class of city or town including, but not limited to, funds distributed to cities (~~pursuant to RCW 82.37.190 relating to motor vehicle fuel importer's tax, and~~) under RCW 82.36.020 relating to motor vehicle fuel tax, ((and)) RCW 82.38.290 relating to use fuel tax, and RCW 82.36.275 and 82.38.080(9).

Sec. 5. RCW 47.02.160 and 1990 c 293 s 5 are each amended to read as follows:

Bonds issued under the authority of RCW 47.02.120 through 47.02.190 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 RCW 47.02.120 through 47.02.190 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 RCW 47.02.120 through 47.02.190, 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 RCW 47.02.120 through 47.02.190.

Sec. 6. RCW 47.10.793 and 1979 ex.s. c 180 s 4 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.790 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 of and interest on such bonds shall be first payable in the manner provided in RCW 47.10.790 through 47.10.798 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 provisions of RCW 47.10.790 through 47.10.798, 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 bonds issued under the provisions of RCW 47.10.790 through 47.10.798.

Sec. 7. RCW 47.10.804 and 1981 c 316 s 4 are each amended to read as follows:

Bonds issued under RCW 47.10.801 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 of and interest on such bonds shall be first payable in the manner provided in RCW 47.10.801 through 47.10.809 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 RCW 47.10.801 through 47.10.809, and the legislature hereby 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 RCW 47.10.801 through 47.10.809.

Sec. 8. RCW 47.10.815 and 1993 c 431 s 4 are each amended to read as follows:

Bonds issued under the authority of RCW 47.10.812 through 47.10.817 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 RCW 47.10.812 through 47.10.817 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 RCW 47.10.812 through 47.10.817, 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 RCW 47.10.812 through 47.10.817.

Sec. 9. RCW 47.10.822 and 1993 c 432 s 4 are each amended to read as follows:

Bonds issued under the authority of RCW 47.10.819 through 47.10.824 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 RCW 47.10.819 through 47.10.824 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 RCW 47.10.819 through 47.10.824, 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 RCW 47.10.819 through 47.10.824.

Sec. 10. RCW 47.10.829 and 1993 c 6 s 4 are each amended to read as follows:

Bonds issued under the authority of RCW 47.10.826 through 47.10.831 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 RCW 47.10.826 through 47.10.831 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 RCW 47.10.826 through 47.10.831, 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 RCW 47.10.826 through 47.10.831.

Sec. 11. RCW 47.26.424 and 1981 c 315 s 9 are each amended to read as follows:

The first authorization bonds, series II bonds, and series III 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 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 RCW 47.26.420 through 47.26.427, 47.26.425, and 47.26.4254 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.

Sec. 12. RCW 47.26.4252 and 1994 c 179 s 23 are each amended to read as follows:

Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, shall first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36(~~(-82.37)~~) and 82.38 RCW and which is distributed to the urban arterial trust account in the motor vehicle fund and the certain sums received by the small city account in the motor vehicle fund imposed by RCW 82.36.025(3) and 46.68.100(9), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the urban arterial trust account and the small city account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon 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 on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, shall be repaid from the first moneys distributed to

the urban arterial trust account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues.

Sec. 13. RCW 47.26.4254 and 1994 c 179 s 24 are each amended to read as follows:

(1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36(~~(,82.37,)~~) and 82.38 RCW and that is distributed to the urban arterial trust account in the motor vehicle fund and the certain sums received by the small city account in the motor vehicle fund imposed by RCW 82.36.025(3) and 46.68.100(9), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420. If the moneys so distributed to the urban arterial trust account and the small city account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon shall next 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 state, counties, cities, and towns pursuant to RCW 46.68.100, subject, however, to subsection (2) of this section.

(2) To the extent that moneys so distributed to the urban arterial trust account and the small city account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due shall first 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 state. The remaining forty percent shall first 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 cities and towns pursuant to RCW 46.68.100(1) and to the counties pursuant to RCW 46.68.100(3). Of the counties', cities', and towns' share of any additional amounts required in the fiscal year ending June 30, 1984, fifteen percent shall be taken from the counties' distributive share and eighty-five percent from the cities' and towns' distributive share. Of the counties', cities', and towns' share of any additional amounts required in each fiscal year thereafter, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share shall correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by the chairman of the transportation improvement

board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns shall be repaid from the first moneys distributed to the urban arterial trust account and the small city account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds.

Sec. 14. RCW 47.26.504 and 1993 c 440 s 5 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.26.500 through 47.26.507 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 RCW 47.26.500 through 47.26.507 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.

Sec. 15. RCW 47.56.749 and 1979 ex.s. c 212 s 10 are each amended to read as follows:

Bonds and bond anticipation notes issued under the provisions of RCW 47.56.740 through 47.56.756 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 of and interest on such bonds shall be first payable in the manner provided in (~~this act~~) chapter 212, Laws of 1979 ex. sess. from the proceeds of state excise taxes on motor vehicles and special fuels imposed by chapters 82.36(~~(-82.37,))~~ and 82.38 RCW and from the tolls and revenues derived from the operation of such toll bridge.

Sec. 16. RCW 47.56.750 and 1979 ex.s. c 212 s 11 are each amended to read as follows:

There is hereby created in the highway bond retirement fund in the state treasury a special account to be known as the Columbia river toll hridge account into which shall be deposited any capitalized interest from the proceeds of the bonds, and at least monthly all of the tolls and other revenues received from the operation of the toll bridge and from any interest which may be earned from the deposit or investment of these revenues after the payment of costs of operation, maintenance, management, and necessary repairs of the facility. The principal

of and interest on the bonds shall be paid first from money deposited in the Columbia river toll bridge account in the highway bond retirement fund, and then, to the extent that money deposited in that account is insufficient to make any such payment when due, from the state excise taxes on motor vehicle and special fuels deposited in the highway 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 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 bonds if the money deposited in the Columbia river toll bridge account of the highway bond retirement fund is insufficient to make such payments. 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 moneys 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 highway 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 state. If the proceeds from the excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the 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 moneys distributed to the state not required for redemption of the bonds or interest thereon. The legislature covenants and pledges 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 bonds.

Sec. 17. RCW 47.56.771 and 1993 c 4 s 3 are each amended to read as follows:

(1) The refunding bonds authorized under RCW 47.56.770 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.

Sec. 18. RCW 47.60.580 and 1977 ex.s. c 360 s 3 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.60.560 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 of and interest on such bonds shall be first payable in the manner provided in RCW 47.60.560 through 47.60.640 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 provisions of RCW 47.60.560 through 47.60.640 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 bonds issued under the provisions of RCW 47.60.560 through 47.60.640.

Sec. 19. RCW 47.60.806 and 1992 c 158 s 4 are each amended to read as follows:

Bonds issued under the authority of RCW 47.60.800 through 47.60.808 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 shall be first payable in the manner provided in RCW 47.60.800 through 47.60.808 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 and distributed to the state pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.60.800 through 47.60.808, 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 RCW 47.60.800 through 47.60.808.

Sec. 20. RCW 82.36.010 and 1993 c 54 s 1 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. For the purposes of this subsection, "commercial motor vehicle" means any motor vehicle used, 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;

(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. 21. RCW 82.38.120 and 1990 c 250 s 85 are each amended to read as follows:

Upon receipt and approval of an application and bond ((~~€~~), if required(~~€~~)), the department shall issue to the applicant a license to act as a special fuel dealer(~~(-a special fuel supplier,)~~) or a special fuel user(~~(-PROVIDED, That))~~. However, the department may refuse to issue a special fuel dealer's license(~~(-special fuel supplier's license,)~~) or a special fuel user's license to any person: (1) Who formerly held either type of license which, prior to the time of filing for application, has been revoked for cause; (~~€~~) (2) who is a subterfuge for the real party in interest whose license prior to the time of filing for application, has been revoked for cause; (~~€~~) (3) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a special fuel license revoked for cause; (~~€~~) (4) who has an unsatisfied debt to the state assessed under either chapter 82.36, (~~(82.37,)~~) 82.38, or 46.87 RCW; or (5) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant (~~him~~) the applicant at least five days written notice of the time and place thereof.

The department shall determine from the information shown in the application or other investigation the kind and class of license to be issued.

All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. License holders shall reproduce the license by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which special fuel is sold, delivered or used and in each motor vehicle used by the license holder to transport special fuel purchased by him or her for resale, delivery or use. Every licensed special fuel user operating a motor vehicle registered in a jurisdiction other than this state shall reproduce the

license and carry a photocopy thereof with each motor vehicle being operated upon the highways of this state.

A special fuel dealer (~~(or a special fuel supplier)~~) may use special fuel in motor vehicles owned or operated by ~~((them))~~ the dealer without securing a license as a special fuel user but ~~((they shall be))~~ the dealer is subject to all other conditions, requirements, and liabilities imposed herein upon a special fuel user.

~~((The department shall furnish to each licensed special fuel supplier a list showing the name and address of each bonded special fuel dealer as of the beginning of each fiscal year, and shall thereafter during each year supplement such list monthly.))~~

Each special fuel dealer's license (~~(, special fuel supplier's license,))~~ and special fuel user's license shall be valid until the expiration date if shown on the license, or until suspended or revoked for cause or otherwise canceled.

No special fuel dealer's license (~~(, special fuel supplier's license,))~~ or special fuel user's license shall be transferable.

Sec. 22. RCW 82.38.140 and 1988 c 51 s 1 are each amended to read as follows:

(1) Every special fuel dealer, (~~(special fuel supplier,))~~ special fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep for a period of not less than three years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all special fuel purchased or received and all of such products sold, delivered, or used by them. Such records shall show:

- (a) The date of each receipt;
- (b) The name and address of the person from whom purchased or received;
- (c) The number of gallons received at each place of business or place of storage in the state of Washington;
- (d) The date of each sale or delivery;
- (e) The number of gallons sold, delivered, or used for taxable purposes;
- (f) The number of gallons sold, delivered, or used for any purpose not subject to the tax imposed herein;
- (g) The name, address, and special fuel license number of the purchaser if the special fuel tax is not collected on the sale or delivery;
- (h) The inventories of special fuel on hand at each place of business at the end of each month.

(2)(a) All special fuel users using special fuel in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis.

(b) Such operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

(3) Persons using special fuel for heating purposes only are not required to maintain records of fuel usage.

(4) Invoices shall be prepared for sales and deliveries of special fuel in the manner and containing such information as may be prescribed by the department.

Every (~~special fuel supplier~~) special fuel dealer or special fuel user making such sales or deliveries of special fuel and every person so receiving and purchasing special fuel must each retain one copy of each such invoice as part of (~~his~~) the dealer's permanent records for the time and purposes above provided.

(5) Every special fuel user shall keep, in addition to (~~his~~) the dealer's records of deliveries into motor vehicles, a complete record as prescribed by the department of the total gallons of special fuel used for other purposes during each month and the purposes for which said special fuel was used.

(6) Subsections (1)(f), (2)(b), and (5) of this section do not apply to special fuel users when the special fuel is used off-highway in farming, construction, or logging operations. Upon filing a special fuel user tax report, every such special fuel user shall certify and bear the burden of proof as to the number of gallons of special fuel used off-highway.

Sec. 23. RCW 82.38.150 and 1991 c 339 s 15 are each amended to read as follows:

For the purpose of determining the amount of liability for the tax herein imposed each special fuel dealer and each special fuel user shall file tax reports with the department, on forms prescribed by the department. Special fuel dealers shall file the reports at the intervals as shown in the following schedule:

Estimated Yearly	Reporting Frequency
Tax Liability	
\$ 0 - \$100	Yearly
\$101 - 250	Semi-yearly
\$251 - 499	Quarterly
\$500 and over	Monthly

Special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, shall file a report yearly, and special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, shall file reports quarterly.

The department shall establish the reporting frequency for each applicant at the time the special fuel license is issued. If it becomes apparent that any special fuel licensee is not reporting in accordance with the above schedule, the department shall change the licensee's reporting frequency by giving thirty days' notice to the licensee by mail to (~~his~~) the licensee's address of record. A report shall be filed with the department even though no special fuel was used, or tax is due, for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and is in lieu of such verification. The report shall show such information as the department may

reasonably require for the proper administration and enforcement of this chapter(~~(-- PROVIDED, That if a special fuel dealer or special fuel user is also a special fuel supplier at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the tax report to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made)~~). For counties within which an additional excise tax on special fuel has been levied by that jurisdiction under RCW 82.80.010, the report must show the quantities of special fuel sold, distributed, or withdrawn from bulk storage by the reporting dealer or user within the county's boundaries and the tax liability from its levy. The special fuel dealer or special fuel user shall file the report on or before the twenty-fifth day of the next succeeding calendar month following the period to which it relates.

Subject to the written approval of the department, tax reports may cover a period ending on a day other than the last day of the calendar month. Taxpayers granted approval to file reports in this manner will file such reports on or before the twenty-fifth day following the end of the reporting period. No change to this reporting period will be made without the written authorization of the department.

If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date shown by the post office cancellation mark stamped upon an envelope containing such report properly addressed to the department, or on the date it was mailed if proof satisfactory to the department is available to establish the date it was mailed.

The department, if it deems it necessary in order to insure payment of the tax imposed by this chapter, or to facilitate the administration of this chapter, has the authority to require the filing of reports and tax remittances at shorter intervals than one month if, in its opinion, an existing bond has become insufficient.

The department may permit any special fuel user whose sole use of special fuel is in motor vehicles or equipment exempt from tax as provided in RCW 82.38.075 and 82.38.080 (1), (2), (3), (8), and (9), in lieu of the reports required in this section, to submit reports annually or as requested by the department, in such form as the department may require.

A special fuel user whose sole use of special fuel is for purposes other than the propulsion of motor vehicles upon the public highways of this state shall not be required to submit the reports required in this section.

Sec. 24. RCW 82.38.170 and 1994 c 262 s 25 are each amended to read as follows:

(1) If any special fuel dealer or special fuel user fails to pay any taxes collected or due the state of Washington by said dealer or user within the time

prescribed by RCW 82.38.150 and 82.38.160, said dealer or user shall pay in addition to such tax a penalty of ten percent of the amount thereof.

(2) If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient it may proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency a penalty of ten percent of the amount of the deficiency.

(3) If any special fuel dealer or special fuel user, whether or not he or she is licensed as such, fails, neglects, or refuses to file a special fuel tax report, the department may, on the basis of information available to it, determine the tax liability of the special fuel dealer or the special fuel user for the period during which no report was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(4) If any special fuel dealer or special fuel user shall establish by a fair preponderance of evidence that his or her failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1), (2), and (3) of this section.

(5) If any special fuel dealer or special fuel user shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsection (2) of this section and all other penalties prescribed by law.

(6) Any fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment: PROVIDED, That the department may waive the interest when it determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(7) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(8) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (2) of this section within three years from the twenty-fifth day of the next succeeding calendar month following the reporting period for which the amount is proposed to be

determined or within three years after the return is filed, whichever period expires the later.

(9) Any special fuel dealer or special fuel user against whom an assessment is made under the provisions of subsections (2) or (3) of this section may petition for a reassessment thereof within thirty days after service upon the special fuel dealer or special fuel user of notice thereof. If such petition is not filed within such thirty day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty day period, the department shall reconsider the assessment and, if the special fuel dealer or special fuel user has so requested in his or her petition, shall grant such special fuel dealer or special fuel user an oral hearing and give the special fuel dealer or special fuel user ten days' notice of the time and place thereof. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment shall become final thirty days after service upon the special fuel dealer or special fuel user of notice thereof.

Every assessment made by the department shall become due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the tax.

(10) Any notice of assessment required by this section shall be served personally or by mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the special fuel dealer or special fuel user at his or her address as the same appears in the records of the department.

(11) Any licensee who has had either their special fuel user license~~((+))~~ or special fuel dealer license, ~~((special fuel supplier license,))~~ or ~~((combination thereof))~~ both, revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(12) Any person who, upon audit or investigation by the department, is found to have not paid special fuel taxes as required by this chapter shall be subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who shall hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired.

Sec. 25. RCW 82.38.260 and 1979 c 40 s 18 are each amended to read as follows:

The department shall enforce the provisions of this chapter, and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement thereof. The Washington state patrol and its officers shall aid the department in the enforcement of this chapter, and, for this purpose, are declared to be peace officers, and given police power and authority

throughout the state to arrest on sight any person known to have committed a violation of the provisions of this chapter.

The department or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer, (~~(special fuel supplier or)~~) special fuel user, or any person dealing in, transporting, or storing special fuel as defined in this chapter and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all taxes due hereunder are being properly reported and paid. The fact that such books, papers, records and equipment are not maintained in this state at the time of demand shall not cause the department to lose any right of such examination under this chapter when and where such records become available.

The department or its authorized representative is further empowered to investigate the disposition of special fuel by any person where the department has reason to believe that untaxed special fuel has been diverted to a use subject to the taxes imposed by this chapter without said taxes being paid in accordance with the requirements of this chapter.

For the purpose of enforcing the provisions of this chapter it shall be presumed that all special fuel delivered to service stations as well as all special fuel otherwise received by a special fuel dealer or a special fuel user into storage and dispensing equipment designed to fuel motor vehicles is delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles on the highways of this state, unless the contrary is established by satisfactory evidence.

The department shall, upon request from the officials to whom are entrusted the enforcement of the special 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, forward to such officials any information which he or she may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel dealer (~~(special fuel supplier)~~) or special fuel user, provided such other state or states furnish like information to this state.

Returns required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public.

Sec. 26. RCW 82.41.040 and 1982 c 161 s 4 are each amended to read as follows:

The amount of the tax imposed and collected on behalf of this state under an agreement entered into under this chapter shall be determined as provided in chapter (~~82.37 and~~) 82.38 RCW.

Passed the House March 1, 1995.

Passed the Senate April 22, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 275

[Substitute House Bill 1237]

INDIGENT PERSONS—RIGHT TO COUNSEL—COURT FEES AND COSTS

AN ACT Relating to indigent persons; amending RCW 13.40.145; adding new sections to chapter 10.73 RCW; and creating a new section

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

NEW SECTION. Sec. 1. The legislature is aware that the constitutional requirements of equal protection and due process require that counsel be provided for indigent persons and persons who are indigent and able to contribute for the first appeal as a matter of right from a judgment and sentence in a criminal case or a juvenile offender proceeding, and no further. There is no constitutional right to appointment of counsel at public expense to collaterally attack a judgment and sentence in a criminal case or juvenile offender proceeding or to seek discretionary review of a lower appellate court decision.

The legislature finds that it is appropriate to extend the right to counsel at state expense beyond constitutional requirements in certain limited circumstances to persons who are indigent and persons who are indigent and able to contribute as those terms are defined in RCW 10.101.010.

NEW SECTION. Sec. 2. A new section is added to chapter 10.73 RCW to read as follows:

Counsel shall be provided at state expense to an adult offender convicted of a crime and to a juvenile offender convicted of an offense when the offender is indigent or indigent and able to contribute as those terms are defined in RCW 10.101.010 and the offender:

- (1) Files an appeal as a matter of right;
- (2) Responds to an appeal filed as a matter of right or responds to a motion for discretionary review or petition for review filed by the state;
- (3) Is under a sentence of death and requests counsel be appointed to file and prosecute a motion or petition for collateral attack as defined in RCW 10.73.090. Counsel may be provided at public expense to file or prosecute a second or subsequent collateral attack on the same judgment and sentence, if the court determines that the collateral attack is not barred by RCW 10.73.090 or 10.73.140;
- (4) Is not under a sentence of death and requests counsel to prosecute a collateral attack after the chief judge has determined that the issues raised by the petition are not frivolous, in accordance with the procedure contained in rules of appellate procedure 16.11. Counsel shall not be provided at public expense to file or prosecute a second or subsequent collateral attack on the same judgment and sentence;
- (5) Responds to a collateral attack filed by the state or responds to or prosecutes an appeal from a collateral attack that was filed by the state;

(6) Prosecutes a motion or petition for review after the supreme court or court of appeals has accepted discretionary review of a decision of a court of limited jurisdiction; or

(7) Prosecutes a motion or petition for review after the supreme court has accepted discretionary review of a court of appeals decision.

NEW SECTION. **Sec. 3.** A new section is added to chapter 10.73 RCW to read as follows:

(1) The court of appeals, supreme court, and superior courts may require an adult or a juvenile convicted of an offense or the parents or another person legally obligated to support a juvenile offender to pay appellate costs.

(2) Appellate costs are limited to expenses specifically incurred by the state in prosecuting or defending an appeal or collateral attack from a criminal conviction or sentence or a juvenile offender conviction or disposition. Appellate costs shall not include expenditures to maintain and operate government agencies that must be made irrespective of specific violations of the law. Expenses incurred for producing a verbatim report of proceedings and clerk's papers may be included in costs the court may require a convicted defendant or juvenile offender to pay.

(3) Costs, including recoupment of fees for court appointed counsel, shall be requested in accordance with the procedures contained in Title 14 of the rules of appellate procedure and in Title 9 of the rules for appeal of decisions of courts of limited jurisdiction. An award of costs shall become part of the trial court judgment and sentence. An award of costs in juvenile cases shall also become part of any order previously entered in the trial court pursuant to RCW 13.40.145.

(4) A defendant or juvenile offender who has been sentenced to pay costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the defendant or juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the defendant, the defendant's immediate family, or the juvenile offender, the sentencing court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(5) The parents or another person legally obligated to support a juvenile offender who has been ordered to pay appellate costs pursuant to RCW 13.40.145 and who is not in contumacious default in the payment may at any time petition the court that sentenced the juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the parents or another person legally obligated to support a juvenile offender or on their immediate families, the sentencing court may remit all or part of the amount due in costs, or may modify the method of payment.

Sec. 4. RCW 13.40.145 and 1984 c 86 s 1 are each amended to read as follows:

Upon disposition or at the time of a modification or at the time an appellate court remands the case to the trial court following a ruling in favor of the state the court may order the juvenile or a parent or another person legally obligated to support the juvenile to appear, and the court may inquire into the ability of those persons to pay a reasonable sum representing in whole or in part the fees for legal services provided by publicly funded counsel and the costs incurred by the public in producing a verbatim report of proceedings and clerk's papers for use in the appellate courts.

If, after hearing, the court finds the juvenile, parent, or other legally obligated person able to pay part or all of the attorney's fees and costs incurred on appeal, the court may enter such order or decree as is equitable and may enforce the order or decree by execution, or in any way in which a court of equity may enforce its decrees.

In no event may the court order an amount to be paid for attorneys' fees that exceeds the average per case fee allocation for juvenile proceedings in the county where the services have been provided or the average per case fee allocation for juvenile appeals established by the Washington supreme court.

In any case in which there is no compliance with an order or decree of the court requiring a juvenile, parent, or other person legally obligated to support the juvenile to pay for legal services provided by publicly funded counsel, the court may, upon such person or persons being properly summoned or voluntarily appearing, proceed to inquire into the amount due upon the order or decree and enter judgment for that amount against the defaulting party or parties. Judgment shall be docketed in the same manner as are other judgments for the payment of money.

The county in which such judgments are entered shall be denominated the judgment creditor, and the judgments may be enforced by the prosecuting attorney of that county. Any moneys recovered thereon shall be paid into the registry of the court and shall be disbursed to such person, persons, agency, or governmental entity as the court finds entitled thereto.

Such judgments shall remain valid and enforceable for a period of ten years subsequent to entry.

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.

Passed the House April 20, 1995.

Passed the Senate April 14, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 276

[Substitute House Bill 1250]

INDUSTRIAL INSURANCE AWARDS—REQUIRING PROMPT PAYMENT

AN ACT Relating to prompt payment of industrial insurance awards; adding a new section to chapter 51.32 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 51.32 RCW to read as follows:

(1)(a) If the worker or beneficiary in a state fund claim prevails in an appeal by any party to the board or the court, the department shall comply with the board or court's order with respect to the payment of compensation within the later of the following time periods:

(i) Sixty days after the compensation order has become final and is not subject to review or appeal; or

(ii) If the order has become final and is not subject to review or appeal and the department has, within the period specified in (a)(i) of this subsection, requested the filing by the worker or beneficiary of documents necessary to make payment of compensation, sixty days after all requested documents are filed with the department.

The department may extend the sixty-day time period for an additional thirty days for good cause.

(b) If the department fails to comply with (a) of this subsection, any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for Thurston county.

(2) In a proceeding under this section, the court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders and may award a penalty of up to one thousand dollars to the person entitled to compensation under the order.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title.

NEW SECTION. Sec. 2. This act applies to all appeals in state fund claims determined under Title 51 RCW on or after the effective date of this act, regardless of the date of filing of the claim.

Passed the House April 23, 1995.

Passed the Senate April 22, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 277

[Engrossed Substitute House Bill 1679]

PROFESSIONAL LICENSING OF PRIVATE SECURITY AND INVESTIGATION

AN ACT Relating to professional licensing of private security and investigation; amending RCW 18.170.030, 18.170.060, 18.170.070, 18.170.090, 18.170.100, 18.170.110, 18.170.120, 18.170.130, 18.170.160, 18.170.170, 18.170.180, 18.170.190, 18.170.230, 18.170.250, 18.165.010, 18.165.020, 18.165.030, 18.165.040, 18.165.050, 18.165.060, 18.165.070, 18.165.080, 18.165.090, 18.165.100, 18.165.110, 18.165.120, 18.165.130, 18.165.140, 18.165.150, 18.165.160, 18.165.170, 18.165.180, 18.165.190, 18.165.220, and 18.165.240; adding new sections to chapter 18.170 RCW; adding new sections to chapter 18.165 RCW; prescribing penalties; and declaring an emergency.

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

Sec. 1. RCW 18.170.030 and 1991 c 334 s 3 are each amended to read as follows:

An applicant must meet the following minimum requirements to obtain a private security guard license:

- (1) Be at least eighteen years of age;
- (2) Be a citizen of the United States or a resident alien;
- (3) Not have been convicted of a crime in any jurisdiction, if the director determines that the applicant's particular crime directly relates to his or her capacity to perform the duties of a private security guard, and the director determines that the license should be withheld to protect the citizens of Washington state. The director shall make her or his determination to withhold a license because of previous convictions (~~(consistent with)~~) notwithstanding the restoration of employment rights act, chapter 9.96A RCW;
- (4) Be employed by or have an employment offer from a licensed private security company or be licensed as a private security company;
- (5) Satisfy the training requirements established by the director;
- (6) Submit a set of fingerprints; (~~and~~)
- (7) Pay the required nonrefundable fee for each application; and
- (8) Submit a fully completed application that includes proper identification on a form prescribed by the director for each company of employment.

NEW SECTION. **Sec. 2.** A new section is added to chapter 18.170 RCW to read as follows:

A licensee who transfers from one company to another must submit a transfer application on a form prescribed by the director along with a transfer fee established by the director.

NEW SECTION. **Sec. 3.** A new section is added to chapter 18.170 RCW to read as follows:

No licensee, employee or agent of a licensee, or anyone accompanying a licensee, employee, or agent may display a firearm while soliciting a client.

Sec. 4. RCW 18.170.060 and 1991 c 334 s 6 are each amended to read as follows:

(1) In addition to meeting the minimum requirements to obtain a license as a private security guard, an applicant, or, in the case of a partnership, each

partner, or, in the case of a corporation, the qualifying agent must meet the following requirements to obtain a license to own or operate a private security company:

(a) Possess three years' experience as a manager, supervisor, or administrator in the private security business or a related field approved by the director, or be at least twenty-one years of age and pass an examination determined by the director to measure the person's knowledge and competence in the private security business;

(b) Meet the insurance requirements of this chapter; and

(c) Pay any additional fees established by the director.

(2) If the qualifying agent upon whom the licensee relies to comply with subsection (1) of this section ceases to perform his or her duties on a regular basis, the licensee must promptly notify the director by certified or registered mail. Within sixty days of sending notification to the director, the licensee must obtain a substitute qualifying agent who meets the requirements of this section. The director may extend the period for obtaining a substitute qualifying agent.

(3) A company license issued pursuant to this section may not be assigned or transferred without prior written approval of the director.

(4) No license to own or operate a private security guard company may be issued to an applicant if the name of the company portrays the company as a public law enforcement agency, or in association with a public law enforcement agency, or includes the word "police".

Sec. 5. RCW 18.170.070 and 1991 c 334 s 7 are each amended to read as follows:

(1) The director shall issue a private security guard license card to each licensed private security guard and an armed private security guard license card to each armed private security guard.

(a) The license card may not be used as security clearance (~~or as identification~~).

(b) A private security guard shall carry the license card whenever he or she is performing the duties of a private security guard and shall exhibit the card upon request.

(c) An armed private security guard shall carry the license card whenever he or she is performing the duties of an armed private security guard and shall exhibit the card upon request.

(2) The director shall issue a license certificate to each licensed private security company.

(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.

Sec. 6. RCW 18.170.090 and 1991 c 334 s 9 are each amended to read as follows:

(1) A licensed private security company may issue an employee a temporary registration card of the type and form ~~((prescribed))~~ provided by the director, but only after the employee has completed preassignment training and submitted ~~((an))~~ a full and complete application for a private security guard license to the department. The application must be mailed to the department within three business days after issuance of the temporary registration card. The temporary registration card is valid for a maximum period of sixty days and does not authorize a person to carry firearms during the performance of his or her duties as a private security guard. The temporary registration card permits the applicant to perform the duties of a private security guard for the issuing licensee.

(2) Upon expiration of a temporary registration card or upon the receipt of a permanent registration card or notification from the department that a permanent license is being withheld from an applicant, the applicant shall surrender his or her temporary registration card to the licensee ~~((who shall immediately forward it to the director))~~.

(3) The director may suspend the authority to use temporary registration cards for a period of one year for any private security guard company that fails to comply with the provisions of this section. After the suspension period, the director may reinstate the company's use of temporary registration cards after receipt of a written request from the company.

Sec. 7. RCW 18.170.100 and 1991 c 334 s 10 are each amended to read as follows:

(1) The director shall adopt rules establishing preassignment training and testing requirements, which shall include a minimum of four hours of classes. The director may establish, by rule, continuing education requirements for private security guards.

(2) The director shall consult with the private security industry and law enforcement before adopting or amending the preassignment training or continuing education requirements of this section.

~~((3) A private security guard or armed private security guard need not fulfill the preassignment training requirements of this chapter if he or she, within sixty days of July 28, 1991, provides proof to the director that he or she previously has met the training requirements of this chapter or has been employed as a private security guard or armed private security guard for at least eighteen consecutive months immediately prior to the date of application.))~~

Sec. 8. RCW 18.170.110 and 1991 c 334 s 11 are each amended to read as follows:

(1) A private security company shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed private security guard or armed private security guard by returning the license to the department with the word terminated written across the face of the license, the date of termination, and the signature of the principal or the principal's designee of the private security guard company.

(2) A private security company shall notify the department within seventy-two hours and the chief law enforcement officer of the county, city, or town in which the private security guard or armed private security guard was last employed immediately upon receipt of information affecting his or her continuing eligibility to hold a license under the provisions of this chapter.

(3) A private security guard company shall notify the local law enforcement agency whenever an employee who is an armed private security guard discharges his or her firearm while on duty other than on a supervised firearm range. The notification shall be made within ten business days of the date the firearm is discharged.

Sec. 9. RCW 18.170.120 and 1991 c 334 s 12 are each amended to read as follows:

(1) Any person from another state that the director determines has selection, training, and other requirements at least equal to those required by this chapter, and who holds a valid license, registration, identification, or similar card issued by the other state, may apply for a private security guard license card or armed private security guard license card on a form prescribed by the director. Upon receipt of a processing fee to be determined by the director, the director shall issue the individual a private security guard license card or armed private security guard license card.

(2) A valid private security guard license, registration, identification, or similar card issued by any other state of the United States is valid in this state for a period of ninety days, but only if the licensee is on temporary assignment as a private security guard for the same employer that employs the licensee in the state in which he or she is a permanent resident.

(3) A person from another state on temporary assignment in Washington may not solicit business in this state or represent himself or herself as licensed in this state.

Sec. 10. RCW 18.170.130 and 1991 c 334 s 13 are each amended to read as follows:

(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.

(2) After receipt of an application for a license, the director shall conduct an investigation to determine whether the facts set forth in the application are true and shall request that the Washington state patrol compare the fingerprints submitted with the application to fingerprint records available to the Washington state patrol. The Washington state patrol shall forward the fingerprints of applicants for an armed private security guard license to the federal bureau of investigation for a national criminal history records check. The director may require that fingerprint cards of licensees be periodically reprocessed to identify criminal convictions subsequent to registration.

(3) The director shall solicit comments from the chief law enforcement officer of the county and city or town in which the applicant's employer is located on issuance of a permanent private security guard license.

(4) A summary of the information acquired under this section, to the extent that it is public information, shall be forwarded by the department to the applicant's employer ~~((and to the chief law enforcement officer of the county and city or town in which the applicant's employer is located, for the purpose of comment prior to the issuance of a permanent private security guard license))~~.

Sec. 11. RCW 18.170.160 and 1991 c 334 s 16 are each amended to read as follows:

(1) After June 30, 1992, any person who performs the functions and duties of a private security guard in this state without being licensed in accordance with 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.

(2) After January 1, 1992, a person is guilty of a gross misdemeanor if he or she owns or operates a private security company in this state without first obtaining a private security company license.

(3) After June 30, 1992, the owner or qualifying agent of a private security company is guilty of a gross misdemeanor if he or she employs an unlicensed person to perform the duties of a private security guard without issuing the employee a valid temporary registration card if the employee does not have in his or her possession a permanent private security guard license issued by the department. This subsection does not preclude a private security company from requiring applicants to attend preassignment training classes or from paying wages for attending the required preassignment training classes.

(4) After June 30, 1992, a person is guilty of a gross misdemeanor if he or she performs the functions and duties of an armed private security guard in this state unless the person holds a valid armed private security guard license issued by the department.

(5) After June 30, 1992, it is a gross misdemeanor for a private security company to hire, contract with, or otherwise engage the services of an unlicensed armed private security guard knowing that he or she does not have a valid armed private security guard license issued by the director.

(6) It is a gross misdemeanor for a person to possess or use any vehicle or equipment displaying the word "police" or "law enforcement officer" or having any sign, shield, marking, accessory, or insignia that indicates that the equipment or vehicle belongs to a public law enforcement agency.

(7) It is a gross misdemeanor for any person who performs the functions and duties of a private security guard to use any name that includes the word "police" or "law enforcement" or that portrays the individual or a business as a public law enforcement agency.

(8) It is the duty of all officers of the state and political subdivisions thereof to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the director, and render such legal assistance as may be necessary in carrying out the provisions of this chapter.

Sec. 12. RCW 18.170.170 and 1991 c 334 s 17 are each amended to read as follows:

The following acts are prohibited and constitute grounds for disciplinary action, assessing administrative penalties, 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) Practicing fraud, deceit, or misrepresentation in any of the private security activities covered by this chapter;

(3) Knowingly making a material misstatement or omission in the application for a license or firearms certificate;

(4) Not meeting the qualifications set forth in RCW 18.170.030, 18.170.040, or 18.170.060;

(5) Failing to return immediately on demand a firearm issued by an employer;

(6) Carrying a firearm in the performance of his or her duties if not the holder of a valid armed private security guard license, or carrying a firearm not meeting the provisions of this chapter while in the performance of his or her duties;

(7) Failing to return immediately on demand any uniform, badge, or other item of equipment issued to the private security guard by an employer;

(8) Making any statement that would reasonably cause another person to believe that the private security guard is a sworn peace officer;

(9) Divulging confidential information that may compromise the security of any premises, or valuables shipment, or any activity of a client to which he or she was assigned;

(10) 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));~~);

(11) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(12) Advertising that is false, fraudulent, or misleading;

(13) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(14) 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;

(15) Failure to cooperate with the director by:

(a) Not 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) Not furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or

(c) Not responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;

(16) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the disciplining authority;

(17) Aiding or abetting an unlicensed person to practice if a license is required;

(18) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(19) Failure to adequately supervise employees to the extent that the public health or safety is at risk;

(20) 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 a client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(21) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.170.060;

(22) Failure to maintain insurance; and

(23) Failure to have a qualifying principal in place.

**Sec. 13. RCW 18.170.180 and 1991 c 334 s 18 are each amended to read as follows:*

The director shall establish ad hoc advisory committees consisting of no less than five representatives of the private security guard industry who shall consult with the Washington law enforcement executive forum or a similar broad based organization or association to assist in the development of policies to carry out the purposes of this chapter.

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 subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;

(3) 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;

(4) To compel attendance of witnesses at hearings;

(5) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(6) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(7) 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;

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

(9) To adopt standards of professional conduct or practice;

(10) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against a license applicant or license holder as provided by this chapter;

(11) 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;

(12) To designate individuals authorized to sign subpoenas and statements of charges;

(13) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter; ~~((and))~~

(14) To compel the attendance of witnesses at hearings; and

(15) To assess administrative penalties for violations of law, rules, or regulations.

*Sec. 13 was vetoed. See message at end of chapter.

Sec. 14. RCW 18.170.190 and 1991 c 334 s 19 are each amended to read as follows:

A person, including but not limited to consumers, licensees, corporations, organizations, and state and local governmental agencies, may submit a written complaint to the department charging a license holder or applicant with unprofessional or unlawful conduct and specifying the grounds for this 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 or unlawful conduct, the director shall investigate to determine if there has been unprofessional or unlawful 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.

Sec. 15. RCW 18.170.230 and 1991 c 334 s 23 are each amended to read as follows:

Upon a finding 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 director 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) Monitoring of the practice by a supervisor approved by the director;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Withholding a license request;
- (9) Other corrective action; ~~((or))~~
- (10) Refund of fees billed to and collected from the consumer; or
- (11) The assessment of administrative penalties.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

Sec. 16. RCW 18.170.250 and 1991 c 334 s 25 are each amended to read as follows:

(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 shall have the same authority as provided the director under RCW 18.170.190. 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) Unlicensed practice of a profession or operating a business for which a license is required by this chapter, 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 department.))~~

Sec. 17. RCW 18.165.010 and 1991 c 328 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) "Armed private ~~((detective))~~ investigator" means a private ~~((detective))~~ investigator who has a current firearms certificate issued by the commission and is licensed as an armed private ~~((detective))~~ investigator under this chapter.

(2) "Chief law enforcement officer" means the elected or appointed police administrator of a municipal, county, or state police or sheriff's department that has full law enforcement powers in its jurisdiction.

(3) "Commission" means the criminal justice training commission established in chapter 43.101 RCW.

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

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

(6) "Employer" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent of any of the foregoing that employs or seeks to enter into an arrangement to employ any person as a private ~~((detective))~~ investigator.

(7) "Firearms certificate" means a certificate issued by the commission.

(8) "Forensic scientist" or "accident reconstructionist" means a person engaged exclusively in collecting and analyzing physical evidence and data relating to an accident or other matter and compiling such evidence or data to render an opinion of likely cause, fault, or circumstance of the accident or matter.

(9) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(10) "Principal" of a private ~~((detective))~~ investigator agency means the owner or manager appointed by a corporation.

(11) "Private ~~((detective))~~ investigator" means a person who is licensed under this chapter and is employed by a private ~~((detective))~~ investigator agency for the purpose of investigation, escort or body guard services, or property loss prevention activities.

(12) "Private ~~((detective))~~ investigator agency" means a person or entity licensed under this chapter and engaged in the business of detecting, discovering, or revealing one or more of the following:

(a) Crime, criminals, or related information;

(b) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person or thing;

(c) The location, disposition, or recovery of lost or stolen property;

(d) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property;

(e) Evidence to be used before a court, board, officer, or investigative committee;

(f) Detecting the presence of electronic eavesdropping devices; or

(g) The truth or falsity of a statement or representation.

(13) "Qualifying agent" means an officer or manager of a corporation who meets the requirements set forth in this chapter for obtaining a private ~~((detective))~~ investigator agency license.

(14) "Sworn peace officer" means a person who is an employee of the federal government, the state, or a political subdivision, agency, or department branch of a municipality or other unit of local government, and has law enforcement powers.

Sec. 18. RCW 18.165.020 and 1991 c 328 s 2 are each amended to read as follows:

The requirements of this chapter do not apply to:

(1) A person who is employed exclusively or regularly by one employer and performs investigations solely in connection with the affairs of that employer, if the employer is not a private ((~~detective~~) investigator) agency;

(2) An officer or employee of the United States or of this state or a political subdivision thereof, while engaged in the performance of the officer's official duties;

(3) A person engaged exclusively in the business of obtaining and furnishing information about the financial rating of persons;

(4) An attorney at law while performing the attorney's duties as an attorney;

(5) A licensed collection agency or its employee, while acting within the scope of that person's employment and making an investigation incidental to the business of the agency;

(6) Insurers, agents, and insurance brokers licensed by the state, while performing duties in connection with insurance transacted by them;

(7) A bank subject to the jurisdiction of the Washington state banking commission or the comptroller of currency of the United States, or a savings and loan association subject to the jurisdiction of this state or the federal home loan bank board;

(8) A licensed insurance adjuster performing the adjuster's duties within the scope of the adjuster's license;

(9) A secured creditor engaged in the repossession of the creditor's collateral, or a lessor engaged in the repossession of leased property in which it claims an interest;

(10) A person who is a forensic scientist, accident reconstructionist, or other person who performs similar functions and does not hold himself or herself out to be an investigator in any other capacity; or

(11) A person solely engaged in the business of securing information about persons or property from public records.

Sec. 19. RCW 18.165.030 and 1991 c 328 s 3 are each amended to read as follows:

An applicant must meet the following minimum requirements to obtain a private ((~~detective~~) investigator) 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, if the director determines that the applicant's particular crime directly relates to his or her capacity to perform the duties of a private ((~~detective~~) investigator) and the director determines that the license should be withheld to protect the citizens of Washington state. The director shall make her or his determination to withhold

a license because of previous convictions (~~(consistent with)~~) notwithstanding the restoration of employment rights act, chapter 9.96A RCW;

(4) Be employed by or have an employment offer from a private (~~(detective)~~) investigator agency or be licensed as a private (~~(detective)~~) investigator agency;

(5) Submit a set of fingerprints; (~~and~~)

(6) Pay the required nonrefundable fee for each application; and

(7) Submit a fully completed application that includes proper identification on a form prescribed by the director for each company of employment.

NEW SECTION. Sec. 20. A new section is added to chapter 18.165 RCW to read as follows:

A licensee who transfers from one company to another must submit a transfer application on a form prescribed by the director along with a transfer fee established by the director.

Sec. 21. RCW 18.165.040 and 1991 c 328 s 4 are each amended to read as follows:

(1) An applicant must meet the following minimum requirements to obtain an armed private (~~(detective)~~) investigator license:

(a) Be licensed as a private (~~(detective)~~) investigator;

(b) Be at least twenty-one years of age;

(c) Have a current firearms certificate issued by the commission; (~~and~~)

(d) Have a license to carry a concealed pistol; and

(e) Pay the fee established by the director.

(2) The armed private (~~(detective)~~) investigator license may take the form of an endorsement to the private (~~(detective)~~) investigator license if deemed appropriate by the director.

Sec. 22. RCW 18.165.050 and 1991 c 328 s 5 are each amended to read as follows:

(1) In addition to meeting the minimum requirements to obtain a license as a private (~~(detective)~~) investigator, an applicant, or, in the case of a partnership or limited partnership, each partner, or, in the case of a corporation, the qualifying agent must meet the following additional requirements to obtain a private (~~(detective)~~) investigator agency license:

(a) Pass an examination determined by the director to measure the person's knowledge and competence in the private (~~(detective)~~) investigator agency business; or

(b) Have had at least three years' experience in investigative work or its equivalent 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 professional persons other than employers who, based on personal professional knowledge, can substantiate the employment.

(2) An agency license issued pursuant to this section may not be assigned or transferred without prior written approval of the director.

(3) No license to own or operate a private investigator company may be issued to an applicant if the name of the company portrays the company as a public law enforcement agency, or in association with a public law enforcement agency, or includes the word "police."

Sec. 23. RCW 18.165.060 and 1991 c 328 s 6 are each amended to read as follows:

(1) An armed private (~~(detective)~~) investigator license grants authority to the holder, while in the performance of his or her duties, to carry a firearm with which the holder has met the proficiency requirements established by the commission.

(2) All firearms carried by armed private (~~(detectives)~~) investigators in the performance of their duties must be owned by the employer and, if required by law, must be registered with the proper government agency.

NEW SECTION. Sec. 24. A new section is added to chapter 18.165 RCW to read as follows:

No licensee, employee or agent of a licensee, or anyone accompanying a licensee, employee, or agent may display a firearm while soliciting a client.

Sec. 25. RCW 18.165.070 and 1991 c 328 s 7 are each amended to read as follows:

(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.

(2) After receipt of an application for a license, the director shall conduct an investigation to determine whether the facts set forth in the application are true and shall request that the Washington state patrol compare the fingerprints submitted with the application to fingerprint records available to the Washington state patrol. The Washington state patrol shall forward the fingerprints of applicants for an armed private investigator license to the federal bureau of investigation for a national criminal history records check. The director may require that fingerprint cards of licensees be periodically reprocessed to identify criminal convictions subsequent to registration.

(3) The director shall solicit comments from the chief law enforcement officer of the county and city or town in which the applicant's employer is located on issuance of a permanent private investigator license.

(4) A summary of the information acquired under this section, to the extent that it is public information, (~~(shall)~~) may be forwarded by the department to the applicant's employer (~~(and to the chief law enforcement officer of the county and~~

~~city or town in which the applicant's employer is located, for the purpose of comment prior to the issuance of a permanent private detective license).~~

Sec. 26. RCW 18.165.080 and 1991 c 328 s 8 are each amended to read as follows:

(1) The director shall issue a private ~~((detective))~~ investigator license card to each licensed private ~~((detective))~~ investigator and an armed private ~~((detective))~~ investigator license card to each armed private ~~((detective))~~ investigator.

(a) The license card may not be used as security clearance ~~((or as identification))~~.

(b) A private ~~((detective))~~ investigator shall carry the license card whenever he or she is performing the duties of a private ~~((detective))~~ investigator and shall exhibit the card upon request.

(c) An armed private ~~((detective))~~ investigator shall carry the license card whenever he or she is performing the duties of an armed private ~~((detective))~~ investigator and shall exhibit the card upon request.

(2) The director shall issue a license certificate to each licensed private ~~((detective))~~ investigator 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.

Sec. 27. RCW 18.165.090 and 1991 c 328 s 9 are each amended to read as follows:

(1) The director shall adopt rules establishing preassignment training and testing requirements ~~((which shall include a minimum of four hours of classes))~~. The director may establish, by rule, continuing education requirements for private ~~((detectives))~~ investigators.

(2) The director shall consult with the private ~~((detective))~~ investigator industry and law enforcement before adopting or amending the preassignment training or continuing education requirements of this section.

~~((2) A private detective need not fulfill the preassignment training requirements of this chapter if he or she, within sixty days of July 28, 1991, provides proof to the director that he or she previously has met the training requirements of this chapter or has been employed as a private detective or~~

~~armed private detective for at least eighteen consecutive months immediately prior to the date of application.))~~

Sec. 28. RCW 18.165.100 and 1991 c 328 s 10 are each amended to read as follows:

(1) No private ~~((detective))~~ investigator agency license may be issued under the provisions of this chapter unless the applicant files with the director a surety 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 principal and its servants, officers, agents, and employees by reason of its wrongful or illegal acts in conducting business licensed under this chapter. The bond shall be made payable to the state of Washington, and anyone so injured by the principal or its servants, officers, agents, or employees shall have the right and shall be permitted to sue directly upon this obligation in his or her own name. This obligation shall be subject to successive suits for recovery until the face amount is completely exhausted.

(2) Every licensee must at all times maintain on file with the director the surety 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 bond, a licensed private ~~((detective))~~ investigator agency may file with the director a certificate of insurance as evidence that it has comprehensive general liability coverage of at least twenty-five thousand dollars for bodily or personal injury and twenty-five thousand dollars for property damage.

(4) The director may approve alternative methods of guaranteeing financial responsibility.

Sec. 29. RCW 18.165.110 and 1991 c 328 s 11 are each amended to read as follows:

(1) The provisions of this chapter relating to the licensing for regulatory purposes of private ~~((detectives))~~ investigators, armed private ~~((detectives))~~ investigators, and private ~~((detective))~~ investigator 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 private ~~((detective))~~ investigator agencies if such fees or taxes are levied by the state 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 private ~~((detective))~~ investigator agencies with respect to activities that are not regulated under this chapter.

Sec. 30. RCW 18.165.120 and 1991 c 328 s 12 are each amended to read as follows:

Private (~~((detectives))~~) investigators or armed private (~~((detectives))~~) investigators whose duties require them to operate across state lines may operate in this state for up to thirty days per year, if they are properly registered and certified in another state with training and certification requirements that the director finds are at least equal to the requirements of this state.

Sec. 31. RCW 18.165.130 and 1991 c 328 s 13 are each amended to read as follows:

(1) A private (~~((detective))~~) investigator agency shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed private (~~((detective))~~) investigator or armed private (~~((detective))~~) investigator by returning the license to the department with the word terminated written across the face of the license, the date of termination, and the signature of the principal of the private investigator company.

(2) A private (~~((detective))~~) investigator agency shall notify the director within seventy-two hours and the chief law enforcement officer of the county, city, or town in which the agency is located immediately upon receipt of information affecting a licensed private (~~((detective's))~~) investigator's or armed private (~~((detective's))~~) investigator's continuing eligibility to hold a license under the provisions of this chapter.

(3) A private investigator company shall notify the local law enforcement agency whenever an employee who is an armed private investigator discharges his or her firearm while on duty other than on a supervised firearm range. The notification shall be made within ten business days of the date the firearm is discharged.

Sec. 32. RCW 18.165.140 and 1991 c 328 s 14 are each amended to read as follows:

(1) Any person from another state that the director determines has selection, training, and other requirements at least equal to those required by this chapter, and who holds a valid license, registration, identification, or similar card issued by the other state, may apply for a private (~~((detective))~~) investigator license card or armed private (~~((detective))~~) investigator license card on a form prescribed by the director. Upon receipt of (~~((a processing))~~) an application fee to be determined by the director, the director shall issue the individual a private (~~((detective))~~) investigator license card or armed private (~~((detective))~~) investigator license card.

(2) A valid license, registration, identification, or similar card issued by any other state of the United States is valid in this state for a period of ninety days, but only if the licensee is on temporary assignment for the same employer that employs the licensee in the state in which he or she is a permanent resident.

(3) A person from another state on temporary assignment in Washington may not solicit business in this state or represent himself or herself as licensed in this state.

Sec. 33. RCW 18.165.150 and 1991 c 328 s 15 are each amended to read as follows:

(1) After June 30, 1992, any person who performs the functions and duties of a private ~~((detective))~~ investigator 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.

(2) After January 1, 1992, a person is guilty of a gross misdemeanor if he or she owns or operates a private ~~((detective))~~ investigator agency in this state without first obtaining a private ~~((detective))~~ investigator agency license.

(3) After June 30, 1992, the owner or qualifying agent of a private ~~((detective))~~ investigator agency is guilty of a gross misdemeanor if he or she employs any person to perform the duties of a private ~~((detective))~~ investigator without the employee having in his or her possession a permanent private ~~((detective))~~ investigator license issued by the department. This shall not preclude a private ~~((detective))~~ investigator agency from requiring applicants to attend preassignment training classes or from paying wages for attending the required preassignment training classes.

(4) After June 30, 1992, a person is guilty of a gross misdemeanor if he or she performs the functions and duties of an armed private ~~((detective))~~ investigator in this state unless the person holds a valid armed private ~~((detective))~~ investigator license issued by the department.

(5) After June 30, 1992, it is a gross misdemeanor for a private ~~((detective))~~ investigator agency to hire, contract with, or otherwise engage the services of an unlicensed armed private ~~((detective))~~ investigator knowing that the private ~~((detective))~~ investigator does not have a valid armed private ~~((detective))~~ investigator license issued by the director.

(6) It is a gross misdemeanor for a person to possess or use any vehicle or equipment displaying the word "police" or "law enforcement officer" or having any sign, shield, marking, accessory, or insignia that indicates that the equipment or vehicle belongs to a public law enforcement agency.

(7) It is the duty of all officers of the state and political subdivisions thereof to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the director, and render such legal assistance as may be necessary in carrying out the provisions of this chapter.

Sec. 34. RCW 18.165.160 and 1991 c 328 s 16 are each amended to read as follows:

The following acts are prohibited and constitute grounds for disciplinary action, assessing administrative penalties, 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 or firearms certificate, including falsifying requested identification information;

(3) Not meeting the qualifications set forth in RCW 18.165.030, 18.165.040, or 18.165.050;

(4) Failing to return immediately on demand a firearm issued by an employer;

(5) Carrying a firearm in the performance of his or her duties if not the holder of a valid armed private ((~~detective~~) investigator) license, or carrying a firearm not meeting the provisions of this chapter while in the performance of his or her duties;

(6) Failing to return immediately on demand company identification, badges, or other items issued to the private ((~~detective~~) investigator) by an employer;

(7) Making any statement that would reasonably cause another person to believe that the private ((~~detective~~) investigator) is a sworn peace officer;

(8) Divulging confidential information obtained in the course of any investigation to which he or she was assigned;

(9) Acceptance of employment that is adverse to a client or former client and relates to a matter about which a licensee has obtained confidential information by reason of or in the course of the licensee's employment by the client;

(10) 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)~~);

(11) Advertising that is false, fraudulent, or misleading;

(12) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(13) 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;

(14) Failure to cooperate with the director by:

(a) Not 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) Not furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or

(c) Not responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;

(15) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;

(16) Aiding or abetting an unlicensed person to practice if a license is required;

(17) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(18) Failure to adequately supervise employees to the extent that the public health or safety is at risk;

(19) 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; ((øø))

(20) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.165.050;

(21) Assisting a client to locate, trace, or contact a person when the investigator knows that the client is prohibited by any court order from harassing or contacting the person whom the investigator is being asked to locate, trace, or contact, as it pertains to domestic violence, stalking, or minor children;

(22) Failure to maintain bond or insurance; or

(23) Failure to have a qualifying principal in place.

Sec. 35. RCW 18.165.170 and 1991 c 328 s 17 are each amended to read as follows:

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 subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;

(3) 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;

(4) To compel attendance of witnesses at hearings;

(5) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(6) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(7) 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;

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

(9) To adopt standards of professional conduct or practice;

(10) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against a license applicant or license holder as provided by this chapter;

(11) 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;

(12) To designate individuals authorized to sign subpoenas and statements of charges;

(13) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter; ~~((and))~~

(14) To compel attendance of witnesses at hearings; and

(15) To assess administrative penalties for violations of law, rules, or regulations.

Sec. 36. RCW 18.165.180 and 1991 c 328 s 18 are each amended to read as follows:

A person, including but not limited to consumers, licensees, corporations, organizations, and state and local governmental agencies, may submit a written complaint to the department charging a license holder or applicant with unprofessional or unlawful 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 or unlawful conduct, the director shall investigate to determine if there has been unprofessional or unlawful 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.

Sec. 37. RCW 18.165.190 and 1991 c 328 s 19 are each amended to read as follows:

(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 qualifying agent of the employing private ~~((detective))~~ investigator 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 pursuant to 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.

Sec. 38. RCW 18.165.220 and 1991 c 328 s 22 are each amended to read as follows:

Upon a finding that a license holder or applicant has committed unprofessional or unlawful conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the director 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) Monitoring of the practice by a supervisor approved by the director;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Withholding a license request;
- (9) Other corrective action; ~~((or))~~
- (10) Refund of fees billed to and collected from the consumer; or
- (11) Assessing administrative penalties.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

Sec. 39. RCW 18.165.240 and 1991 c 328 s 24 are each amended to read as follows:

(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 shall have the same authority as provided the director under RCW 18.165.190. 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) Unlicensed practice of a profession or operating a business for which a license is required by this chapter, 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 department.))~~

NEW SECTION. Sec. 40. 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. 41. 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, 1995.

Passed the Senate April 6, 1995.

Approved by the Governor May 9, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 9, 1995.

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

"I am returning herewith, without my approval as to section 13, Engrossed Substitute House Bill No. 1679 entitled:

"AN ACT Relating to professional licensing of private security and investigation;"

From the outset of my administration, it has been my objective to review all boards and commissions in existence in an effort to streamline state government. Where a board, commission or committee is not required, has outlived its mission, or where its functions can be achieved without statutory mandate, I have asked the legislature to eliminate it. Working together, we have significantly reduced the number of boards and commissions.

Section 13 of Engrossed Substitute House Bill No. 1679 would require that the director of the Department of Licensing establish ad hoc committees to assist in the

development of policies related to the licensing of security guards. These committees would result in statutorily mandated costs to be borne by licensed security guards and would unnecessarily escalate professional license fees.

Input from security guard professionals can be sought without legislative mandate. Since such input will be vital to the development of rules by the Department of Licensing and, ultimately, for the success of the licensing program, I have instructed the director of the department to include in the rule making process those representatives of the profession as outlined in the bill on a voluntary, cooperative basis.

For this reason, I have vetoed section 13 of Engrossed Substitute House Bill No. 1679.

With the exception of section 13, Engrossed Substitute House Bill No. 1679 is approved."

CHAPTER 278

[House Bill 1359]

CIGARETTE TAX—ADMINISTRATION AND COLLECTION

AN ACT Relating to the administration and collection of the cigarette tax; amending RCW 82.24.010, 82.24.030, 82.24.040, 82.24.050, 82.24.080, 82.24.090, 82.24.110, 82.24.120, 82.24.230, 82.24.250, 82.24.260, and 82.26.010; adding new sections to chapter 82.24 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 82.24.010 and 1961 c 15 s 82.24.010 are each amended to read as follows:

~~((For the purposes of this chapter,))~~ Unless the context clearly requires otherwise ((required by)), the ((context)) definitions in this section apply throughout this chapter:

(1) ~~((“Wholesaler” means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only;))~~ “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(2) “Indian tribal organization” means a federally recognized Indian tribe, or tribal, entit and includes an Indian wholesaler or retailer that is owned b an Indian who is an enrolled tribal memher conducting business under tribal license or similar tribal approval within Indian country. For purposes of this chapter “Indian country” is defined in the manner set forth in 18 U.S.C. Sec. 1151.

(3) “Precollection obligation” means the obligation of a seller otherwise exempt from the tax imposed by this chapter to collect the tax from that seller’s buyer.

(4) “Retailer” means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein,

irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate~~((+))~~.

~~((3))~~ (5) "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each package of cigarettes, less the tax levied by this chapter and less any similar tax levied by this state~~((+))~~.

~~((4))~~ "Cigarette" means ~~any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state;~~

~~((5))~~ (6) "Stamp" means the stamp or stamps ~~((or meter impressions))~~ by use of which the tax levy under this chapter is paid~~((+))~~ or identification is made of those cigarettes with respect to which no tax is imposed.

~~((6))~~ (7) "Wholesaler" means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only.

(8) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" ~~((shall apply))~~ applies equally in ~~((the provisions of))~~ this chapter.

Sec. 2. RCW 82.24.030 and 1990 c 216 s 1 are each amended to read as follows:

(1) In order to enforce collection of the tax hereby levied, the department of revenue shall design and have printed stamps of such size and denominations as may be determined by the department~~((such))~~. The stamps ~~((to))~~ must be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid or whether an exemption from the tax applies.

(2) Except as otherwise provided in this chapter, every person shall cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon or stamps identifying the cigarettes as exempt before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: PROVIDED, That where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

~~((The department may authorize the use of meter stamping machines for imprinting stamps, which imprinted stamps shall be in lieu of those otherwise provided for under this chapter, and if such use is authorized, shall provide reasonable rules and regulations with respect thereto;))~~

Sec. 3. RCW 82.24.040 and 1990 c 216 s 2 are each amended to read as follows:

(1) No wholesaler in this state may possess within this state unstamped cigarettes except that:

~~((1))~~ (a) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

~~((2))~~ (b) Any wholesaler in the state who is licensed under Washington state law and who furnishes a surety bond in a sum satisfactory to the department, shall be permitted to set aside, without affixing the stamps required by this chapter, such part of ~~((his))~~ the wholesaler's stock as may be necessary for the conduct of ~~((his))~~ the wholesaler's business in making sales to persons in another state or foreign country ~~((;))~~ or to instrumentalities of the federal government ~~((; or to the established governing bodies of any Indian tribe, recognized as such by the United States Department of the Interior))~~. Such unstamped stock shall be kept separate and apart from stamped stock.

~~((3))~~ (2) Every wholesaler licensed under Washington state law shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state ~~((;))~~ or to a federal instrumentality ~~((; or to an Indian tribal organization))~~, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the ~~((main office of the))~~ department, at Olympia, not later than the fifteenth day of the following calendar month ~~((; and))~~. For failure to comply with the requirements of this section, the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed. ((The department may also revoke this permission to maintain a stock of unstamped goods for sale to a specific Indian tribal organization when it appears that sales of unstamped cigarettes to persons who are not enrolled members of a recognized Indian tribe are taking place, or have taken place, within the exterior boundaries of the reservation occupied by that tribe.))

(3) Every wholesaler who is licensed by Washington state law shall sell cigarettes to retailers located in Washington only if the retailer has a current cigarette retailer's license or is an Indian tribal organization authorized to possess untaxed cigarettes under this chapter and the rules adopted by the department.

Sec. 4. RCW 82.24.050 and 1990 c 216 s 3 are each amended to read as follows:

No retailer in this state may possess unstamped cigarettes within this state ~~((unless the retailer is licensed under Washington state law and, within a period of time after receipt of any of the articles taxed herein as is reasonably necessary for the purpose, causes the same to have the requisite denomination and amount of stamps affixed to represent the tax imposed herein: PROVIDED, That those articles to which stamps have been properly affixed by a wholesaler or another retailer, licensed under Washington state law, may be retained by any retailer, and that those articles intended for sale to qualified purchasers may, under rules adopted by the department of revenue, be retained by federal instrumentalities~~

and Indian tribal organizations, without affixing the stamps required by)) except as provided in this chapter.

Sec. 5. RCW 82.24.080 and 1993 c 492 s 308 are each amended to read as follows:

(1) It is the intent and purpose of this chapter to levy a tax on all of the articles taxed under this chapter, sold, used, consumed, handled, possessed, or distributed within this state and to collect the tax from the person who first sells, uses, consumes, handles, possesses (either physically or constructively, in accordance with RCW 82.24.020) or distributes them in the state. It is further the intent and purpose of this chapter that whenever any of the articles taxed under this chapter is given away for advertising or any other purpose, it shall be taxed in the same manner as if it were sold, used, consumed, handled, possessed, or distributed in this state.

(2) It is also the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event (~~occurring~~) and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by subsection (1) of this section but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. A precollection obligation may not be imposed upon a person exempt from the tax who sells, distributes, or transfers possession of cigarettes to another person who, by law, is exempt from the tax imposed by this chapter or upon whom the obligation for collection of the tax may not be imposed. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event.

(3) In the event of an increase in the rate of the tax imposed under this chapter, it is the intent of the legislature that the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed articles after the effective date of the rate increase shall be liable for the additional tax, or its precollection obligation as required by this chapter, represented by the rate increase (~~but~~). The failure to pay the additional tax with respect to the first taxable event after the effective date of a rate increase shall not prevent tax liability for the additional tax from arising from a subsequent taxable event.

Sec. 6. RCW 82.24.090 and 1975 1st ex.s. c 278 s 62 are each amended to read as follows:

(1) Every wholesaler or retailer subject to the provisions of this chapter shall keep and preserve for a period of five years an accurate set of records (~~showing~~). These records must show all transactions (had with reference) relating to the purchase and sale of any of the articles taxed (herein and such persons shall also keep separately) under this chapter and show all physical inventories performed on those articles, all invoices, and (shall keep) a record of all stamps purchased (and). All such records and all stock of taxable

articles on hand shall be open to inspection at all reasonable times by the department of revenue or its duly authorized agent.

(2) All wholesalers shall within fifteen days after the first day of each month file with the department of revenue a report of all drop shipment sales made by them to retailers within this state during the preceding month(~~(, which)~~). The report shall show the name and address of the retailer to whom the cigarettes were sold, the kind and quantity, and the date of delivery thereof.

Sec. 7. RCW 82.24.110 and 1990 c 216 s 4 are each amended to read as follows:

(1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler (~~(or licensed retailer)~~) engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

~~((+))~~ (d) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

~~((+))~~ (e) To violate any of the provisions of this chapter;

~~((+))~~ (f) To violate any lawful rule (~~(or regulation)~~) made and published by the department of revenue;

~~((+))~~ (g) To use any stamps more than once;

~~((+))~~ (h) To refuse to allow the department of revenue or (~~(any)~~) its duly authorized agent (~~(thereof)~~), on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

~~((+))~~ (i) Except as provided in this chapter, for any retailer(~~(, except one permitted to maintain an unstamped stock to engage in interstate business as provided herein,)~~) to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

~~((+))~~ (j) For any person to make, use, or present or exhibit to the department of revenue or (~~(any)~~) its duly authorized agent (~~(thereof)~~), any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

~~((+))~~ (k) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;

~~((+))~~ (1) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

~~((+))~~ (m) For any person to possess or transport ~~((upon the public highways, roads, or streets of))~~ in this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless: (i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets ((therefor)) which show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and ((unless)) (iii) the cigarettes are consigned to or purchased by any person in this state who is ((a purchaser or consignee)) authorized by this chapter to possess unstamped cigarettes in this state.

(2) It is unlawful for any person knowingly or intentionally to possess or to transport ~~((upon the public highways, roads, or streets of))~~ in this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (a) Proper notice as required by RCW 82.24.250 has been given; (b) the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (c) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state. Violation of this section shall be punished as a class C felony under Title 9A RCW.

(3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating ~~((the provisions thereof))~~ this chapter.

Sec. 8. RCW 82.24.120 and 1990 c 267 s 1 are each amended to read as follows:

(1) If any person, subject to the provisions of this chapter or any rules ~~((and regulations promulgated))~~ adopted by the department of revenue under authority hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules ~~((and regulations promulgated))~~ adopted by the department of revenue in the administration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest thereon at the rate ~~((of one percent for each thirty days or portions thereof))~~ as computed under

RCW 82.32.050(2) from the date the tax became due, and upon notice mailed to the last known address of the person ~~((said))~~. The amount shall become due and payable in ~~((ten))~~ thirty days from the date of the notice. If the amount remains unpaid, ~~((at which time))~~ the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes ~~((and))~~, penalties, and interest.

(2) The department, for good reason shown, may remit all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate ~~((of one percent for each thirty days or portion thereof))~~ as computed under RCW 82.32.050(2) from the date the tax became due.

(3) The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter.

(4) This section does not apply to taxes or tax increases due under sections 12 and 13 of this act.

Sec. 9. RCW 82.24.230 and 1961 c 15 s 82.24.230 are each amended to read as follows:

All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter, except the following sections ~~((thereof))~~: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as noted otherwise in sections 12 and 13 of this act.

Sec. 10. RCW 82.24.250 and 1990 c 216 s 6 are each amended to read as follows:

(1) No person other than ~~((+))~~; (a) A licensed wholesaler in ~~((ts))~~ the wholesaler's own vehicle~~((r))~~; or ~~((2))~~ (b) a person who has given notice to the department in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers ~~((upon the public highways, roads or streets of this state. In the case of transportation of))~~.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) If the cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state.

(4) In the absence of the notice of transportation required by this section or in the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not a person authorized by chapter 82.24 RCW to possess unstamped cigarettes, the

cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

(5) Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

(6) In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(7) For purposes of this section, the term "person authorized by chapter 82.24 RCW to possess unstamped cigarettes" (~~shall~~) means:

(a) A wholesaler or retailer, licensed under Washington state law(-);₁

(b) The United States or an agency thereof(-);₁ and

(c) Any person, including an Indian tribal organization (~~authorized under rules adopted by the department of revenue to possess unstamped cigarettes~~),₁ who, after notice has been given to the department as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department.

Sec. 11. RCW 82.24.260 and 1987 c 80 s 3 are each amended to read as follows:

(~~Any retailer who sells or otherwise disposes of any unstamped cigarettes~~)

(1) Other than (~~(1)~~);

(a) A person required to be licensed under this chapter;

(b) A federal instrumentality with respect to sales to authorized military personnel (~~and (2) a federally recognized~~);₁ or

(c) An Indian tribal organization with respect to sales to enrolled members of the tribe,

a person who is in lawful possession of unstamped cigarettes and who intends to sell or otherwise dispose of the cigarettes shall (~~collect from the buyer or transferee thereof the tax imposed on such buyer or transferee by this chapter and remit the same to the department after deducting~~) pay, or satisfy its precollection obligation that is imposed by this chapter, the tax required by this chapter by remitting the tax or causing stamps to be affixed in the manner provided in rules adopted by the department.

(2) When stamps are required to be affixed, the person may deduct from the tax collected the compensation (~~he would have been entitled to~~) allowable under (~~the provisions of~~) this chapter (~~if he had affixed stamps to the~~

~~unstamped cigarettes. Such)). The remittance or the affixing of stamps shall, in the case of cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be made at the same time and manner as ((remittances of the retail sales tax as required under chapters 82.08 and 82.32 RCW. In the event the retailer fails to collect the tax from the buyer or transferee, or fails to remit the same, the retailer shall be personally liable therefor, and shall be subject to the administrative provisions of RCW 82.24.230 with respect to the collection thereof by the department)) required in RCW 82.24.250(7)(c). ((The provisions of))~~

(3) This section shall not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax imposed by this chapter.

(4) Nothing in this section shall relieve a wholesaler or a retailer from the requirements of affixing stamps pursuant to RCW 82.24.040 and 82.24.050.

NEW SECTION. Sec. 12. A new section is added to chapter 82.24 RCW to read as follows:

(1) All cigarettes taxed under this chapter that are given away for advertising or other purposes are not required to have the state tax stamp affixed. Instead, the manufacturer of the cigarettes shall pay the tax on a monthly tax return to be supplied by the department.

(2) The tax is due on or before the twenty-fifth day of the month following the month in which the taxable activities, that is the providing of cigarette samples, occur. If not paid by the due date, interest applies to any unpaid tax or penalty. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due.

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer the additional amount found to be due. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The tax payer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All the cigarettes must evidence the payment of the tax by having printed on their packages wording to the following effect: "Complimentary, not for sale, all applicable state taxes paid by manufacturer."

(5) All of chapter 82.32 RCW applies to taxes due under this section except: RCW 82.32.050(1) and 82.32.270.

NEW SECTION. Sec. 13. A new section is added to chapter 82.24 RCW to read as follows:

(1) Any additional tax liability arising from a tax rate increase under this chapter shall be paid, along with reports and returns prescribed by the department, on or before the last day of the month in which the increase becomes effective.

(2) If not paid by the due date, interest shall apply to any unpaid tax or penalty. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due.

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All of chapter 82.32 RCW applies to tax rate increases except: RCW 82.32.050(1) and 82.32.270.

NEW SECTION. Sec. 14. A new section is added to chapter 82.24 RCW to read as follows:

The taxes imposed by this chapter do not apply to the sale of cigarettes to:

- (1) United States army, navy, air force, marine corps, or coast guard exchanges and commissaries and navy or coast guard ships' stores;
- (2) The United States veterans' administration; or
- (3) Any authorized purchaser from the federal instrumentalities named in subsection (1) or (2) of this section.

NEW SECTION. Sec. 15. A new section is added to chapter 82.24 RCW to read as follows:

The department may adopt such rules as are necessary to enforce and administer this chapter.

Sec. 16. RCW 82.26.010 and 1975 1st ex.s. c 278 s 70 are each amended to read as follows:

As used in this chapter:

(1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010(~~(4)~~);

(2) "Manufacturer" means a person who manufactures and sells tobacco products;

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state

who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(4) "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers;

(5) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers;

(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this chapter, or for any other purposes whatsoever.

(7) "Wholesale sales price" means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction;

(8) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state;

(9) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine;

(10) "Retail outlet" means each place of business from which tobacco products are sold to consumers;

(11) "Department" means the state department of revenue.

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, 1995.

Passed the House March 10, 1995.

Passed the Senate April 23, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 279

[Substitute House Bill 1383]

ANNEXATION OF UNINCORPORATED TERRITORY BY MUNICIPAL CORPORATION PROVIDING SEWER OR WATER SERVICE

AN ACT Relating to annexation of unincorporated territory by municipal corporations providing sewer or water service; amending RCW 56.24.205 and 57.24.210; adding a new section to chapter 35.13 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 56.24.205 and 1987 c 449 s 8 are each amended to read as follows:

When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two (~~sewer districts or contiguous to a sewer district and a water~~) municipal corporations providing sewer service, one of which is either a sewer or water district, the (~~board of commissioners of one~~) legislative authority of either of the (districts) contiguous municipal corporations may resolve to annex such territory to that (~~district~~) municipal corporation, provided a majority of the (~~board of commissioners~~) legislative authority of the other (~~sewer or water district~~) contiguous municipal corporation concurs. The (~~district~~) municipal corporation resolving to annex such territory may proceed to effect the annexation by complying with RCW 56.24.180 through 56.24.200. For purposes of this section, "municipal corporation" means a water district, sewer district, city, or town.

Sec. 2. RCW 57.24.210 and 1987 c 449 s 17 are each amended to read as follows:

When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two (~~water districts or contiguous to a water district and a sewer~~) municipal corporations providing water service, one of which is either a water or sewer district, the (~~board of commissioners of one~~) legislative authority of either of the (districts) contiguous municipal corporations may resolve to annex such territory to that (~~district~~) municipal corporation, provided a majority of the (~~board of commissioners~~) legislative authority of the other (~~water or sewer district~~) contiguous municipal corporation concurs. In such event, the (~~district~~) municipal corporation resolving to annex such territory may proceed to effect the annexation by complying with RCW 57.24.170 through 57.24.190. For purposes of this section, "municipal corporation" means a water district, sewer district, city, or town.

NEW SECTION. **Sec. 3.** A new section is added to chapter 35.13 RCW to read as follows:

Nothing in this chapter precludes or otherwise applies to an annexation by a city or town of unincorporated territory as authorized by RCW 56.24.180, 56.24.200, and 56.24.205, or RCW 57.24.170, 57.24.190, and 57.24.210.

NEW SECTION. **Sec. 4.** A new section is added to chapter 35A.14 RCW to read as follows:

Nothing in this chapter precludes or otherwise applies to an annexation by a code city of unincorporated territory as authorized by RCW 56.24.180, 56.24.200, and 56.24.205, or RCW 57.24.170, 57.24.190, and 57.24.210.

Passed the House April 20, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 280

[Substitute House Bill 1429]

RECREATIONAL VEHICLE AND PARK TRAILER REGULATION

AN ACT Relating to manufacturers of recreation vehicles; amending RCW 43.22.340, 43.22.345, 43.22.350, 43.22.434, 43.22.360, 43.22.370, 43.22.380, 43.22.390, 43.22.400, 43.22.410, and 43.22.420; and adding new sections to chapter 43.22 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.22 RCW to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.22.340 through 43.22.420.

(1) "Park trailer" means a park trailer as defined in the American National Standards Institute A119.5 standard for park trailers.

(2) "Recreational vehicle" means a vehicular-type unit primarily designed for recreational camping or travel use that has its own motive power or is mounted on or towed by another vehicle. The units include travel trailers, fifth-wheel trailers, folding camping trailers, truck campers, and motor homes.

Sec. 2. RCW 43.22.340 and 1970 ex.s. c 27 s 1 are each amended to read as follows:

The director of labor and industries shall prescribe and enforce rules and regulations governing safety of body and frame design, and the installation of plumbing, heating, and electrical equipment in mobile homes, commercial coaches (~~and/or~~), recreational vehicles, and/or park trailers; PROVIDED, That the director shall not prescribe or enforce rules and regulations governing the body and frame design of recreational vehicles and park trailers until after the American National Standards Institute shall have published standards and specifications upon this subject. Such rules and regulations shall be reasonably consistent with recognized and accepted principles of safety for body and frame design and plumbing, heating, and electrical installations, in order to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe body and frame design, construction, plumbing, heating, electrical, and other equipment and shall correlate with and, so far as practicable, conform to the then current standards and specifications of the American National Standards Institute standards A119.1 for mobile homes and commercial coaches (~~and~~), A119.2 for recreational vehicles, and A119.5 for park trailers. It shall be unlawful for any person to lease, sell or offer for sale, within this state, any mobile homes, commercial coaches (~~and/or~~), and/or park trailers manufactured after January 1, 1968, containing plumbing, heating, electrical, or other equipment, and after July 1, 1970 body and frame design or construction unless such equipment meets the requirements of the rules and regulations provided for herein.

Sec. 3. RCW 43.22.345 and 1969 ex.s. c 229 s 4 are each amended to read as follows:

Any person violating the provisions of RCW 43.22.340 (~~as amended by section 1, chapter 229, Laws of 1969 ex.s.~~) shall be guilty of a misdemeanor. Each day upon which a violation occurs shall constitute a separate violation.

Sec. 4. RCW 43.22.350 and 1977 ex.s. c 21 s 6 are each amended to read as follows:

(1) In compliance with any applicable provisions of this chapter, the director of the department of labor and industries shall establish a schedule of fees, whether on the basis of plan approval or inspection, for the issuance of an insigne which indicates that the mobile home, commercial coach (~~and/or~~)₂ recreational vehicle, and/or park trailer complies with the provisions of RCW 43.22.340 through 43.22.410 or for any other purpose specifically authorized by any applicable provision of this chapter.

(2) Insignia are not required on mobile homes, commercial coaches (~~and/or~~)₂ recreational vehicles, and/or park trailers manufactured within this state for sale outside this state which are sold to persons outside this state.

Sec. 5. RCW 43.22.434 and 1977 ex.s. c 21 s 5 are each amended to read as follows:

(1) The director or the director's authorized representative may conduct such inspections and investigations as may be necessary to promulgate or enforce mobile home, commercial coach, recreational vehicle, park trailer, factory built housing, and factory built commercial structure rules adopted under the authority of this chapter or to carry out the director's duties under this chapter.

(2) For purposes of enforcement of this chapter, persons duly designated by the director upon presenting appropriate credentials to the owner, operator, or agent in charge may:

(a) At reasonable times and without advance notice enter any factory, warehouse, or establishment in which mobile homes, commercial coaches, recreational vehicles, park trailers, factory built housing, and factory (~~build~~) built commercial structures 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 Mobile Home Construction and Safety Standards Act of 1974. Each inspection shall be commenced and completed with reasonable promptness.

(3) In carrying out the inspections authorized by this section the director may establish, by rule, and impose on mobile home manufacturers, distributors, and dealers such reasonable fees as may be necessary to offset the expenses incurred by the director in conducting the inspections.

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.22 RCW to read as follows:

The director or the director's authorized representative may allow qualifying recreational vehicle and/or park trailer manufacturers to be self-certified as to compliance with the American National Standards Institute A119.2 standard for

recreational vehicles and the American National Standards Institute A119.5 standard for park trailers. Except as provided in subsection (4) of this section, a manufacturer approved for the department's self-certification is exempt from the requirements under RCW 43.22.434 and 43.22.360. The director shall adopt rules to implement the self-certification program. The director may establish fees at a sufficient level to cover the costs of administering this program.

(1) Before a manufacturer becomes self-certified, the department shall make an initial audit of the manufacturer making self-certification application. The audit must review and report on the following:

(a) The manufacturer's quality control program;

(b) The manufacturer's demonstrated ability to manufacture products in conformance with either or both of the American National Standards Institute standards A119.2 and A119.5; and

(c) The availability on site of comprehensive plans for each model being manufactured.

(2) At the sole discretion of the director, a manufacturer currently being audited by the department that is deemed to meet the criteria for an initial self-certification audit may become a self-certified manufacturer without an additional self-certification audit.

(3) If the department denies an application to allow a manufacturer to be self-certified, the manufacturer shall be notified in writing including the reasons for denial. A copy of the initial self-certification audit shall be provided to the manufacturer. A manufacturer who is denied self-certification may appeal the denial under chapter 34.05 RCW.

(4) If the department has reason to believe that the manufacturer is no longer meeting the criteria established in subsection (1) of this section, the department may make an audit of the manufacturer. For purposes of enforcement of this subsection, the department retains inspection and investigation authority under RCW 43.22.434. At the conclusion of this audit, the director or the director's authorized representative may continue the manufacturer's self-certification or require the manufacturer to meet all of the requirements of this chapter from which the manufacturer was once exempted.

(5) The manufacturer to whom the authorization is given shall pay all of the costs of the initial self-certification audit and any subsequent audit that the department has the authority to perform.

(6) The department shall conduct a performance audit of additional industry association quality control programs utilized by self-certified manufacturers at least once every two years.

Sec. 7. RCW 43.22.360 and 1970 ex.s. c 27 s 3 are each amended to read as follows:

Plans and specifications of each model or production prototype of a mobile home, commercial coach (~~and/or~~), recreational vehicle, and/or park trailer showing body and frame design, construction, plumbing, heating and electrical specifications and data shall be submitted to the department of labor and

industries for approval and recommendations with respect to compliance with the regulations and standards of each of such agencies. When plans have been submitted and approved as aforesaid, no changes or alterations shall be made to body and frame design, construction, plumbing, heating or electrical installations or specifications shown thereon in any mobile home, commercial coach ~~((and/or))~~, recreational vehicle, or park trailer without prior written approval of the department of labor and industries.

Sec. 8. RCW 43.22.370 and 1970 ex.s. c 27 s 4 are each amended to read as follows:

Any mobile home, commercial coach ~~((and/or))~~, recreational vehicle, and/or park trailer leased or sold in Washington and manufactured prior to July 1, 1968, which has not been inspected prior to its sale and which does not meet the requirements prescribed will not be required to comply with said requirements except for alterations or installations referred to in RCW 43.22.360.

Sec. 9. RCW 43.22.380 and 1970 ex.s. c 27 s 5 are each amended to read as follows:

Used mobile homes, commercial coaches ~~((and/or))~~, recreational vehicles, and/or park trailers manufactured for use outside this state which do not meet the requirements prescribed and have been used for six months or more will not be required to comply with said requirements except for alterations or installations referred to in RCW 43.22.360.

Sec. 10. RCW 43.22.390 and 1970 ex.s. c 27 s 6 are each amended to read as follows:

Mobile homes, commercial coaches ~~((and/or))~~, recreational vehicles, and/or park trailers subject to the provisions of RCW 43.22.340 through 43.22.410, and mobile homes, commercial coaches ~~((and/or))~~, recreational vehicles, and/or park trailers upon which alterations of body and frame design, construction or installations of plumbing, heating or electrical equipment referred to in RCW 43.22.360 are made after July 1, 1968, shall have affixed thereto such insigne of approval.

Sec. 11. RCW 43.22.400 and 1970 ex.s. c 27 s 7 are each amended to read as follows:

If the director of the department of labor and industries determines that the standards for body and frame design, construction and the plumbing, heating and electrical equipment installed in mobile homes, commercial coaches ~~((and/or))~~, recreational vehicles, and/or park trailers by the statutes or rules and regulations of other states are at least equal to the standards prescribed by this state, he may so provide by regulation. Any mobile home, commercial coach ~~((and/or))~~, recreational vehicle, and/or park trailer which a state listed in such regulations has approved as meeting its standards for body and frame design, construction and plumbing, heating and electrical equipment shall be deemed to meet the standards of the director of the department of labor and industries, if he determines that the standards of such state are actually being enforced.

Sec. 12. RCW 43.22.410 and 1970 ex.s. c 27 s 8 are each amended to read as follows:

Any mobile home, commercial coach (~~and/or~~), recreational vehicle, and/or park trailer that meets the requirements prescribed under RCW 43.22.340 shall not be required to comply with any ordinances of a city or county prescribing requirements for body and frame design, construction or plumbing, heating and electrical equipment installed in mobile homes, commercial coaches (~~and/or~~), recreational vehicles, and/or park trailers.

Sec. 13. RCW 43.22.420 and 1987 c 330 s 601 are each amended to read as follows:

There is hereby created a factory assembled structures advisory board consisting of nine members to be appointed by the director of labor and industries. It shall be the purpose and function of the board to advise the director on all matters pertaining to the enforcement of this chapter including but not limited to standards of body and frame design, construction and plumbing, heating and electrical installations, minimum inspection procedures, the adoption of rules and regulations pertaining to the manufacture of factory assembled structures, mobile homes, commercial coaches (~~and~~), recreational vehicles, and park trailers. The advisory board shall periodically review the rules promulgated under RCW 43.22.450 through 43.22.490 and shall recommend changes of such rules to the department if it deems changes advisable.

The members of the advisory board shall be representative of consumers, the regulated industries, and allied professionals. The term of each member shall be four years. However, the director may appoint the initial members of the advisory board to staggered terms not exceeding four years.

The chief inspector or any person acting as chief inspector for the factory assembled structures, mobile home, commercial coach (~~and~~), recreational vehicle, and park trailer section shall serve as secretary of the board during his tenure as chief. Meetings of the board shall be called at the discretion of the director of labor and industries, but at least quarterly. Each member of the board shall be paid travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended which shall be paid out of the appropriation to the department of labor and industries, upon vouchers approved by the director of labor and industries or his or her designee.

Passed the House April 19, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 281

[Engrossed Substitute House Bill 1431]

RETIREMENT SYSTEMS—CREDITING OF RECOVERED FUNDS

AN ACT Relating to department of retirement system expenses; amending RCW 41.50.255; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 41.50.255 and 1993 sp.s. c 24 s 916 are each amended to read as follows:

The director is authorized to pay from the interest earnings of the trust funds of the public employees' retirement system, the teachers' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the judges' retirement system, or the law enforcement officers' and fire fighters' retirement system lawful obligations of the appropriate system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the appropriate trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings.

~~((During the period from July 1, 1993, until June 30, 1995,))~~ The director may also pay from the interest earnings of the trust funds specified in this section costs incurred in investigating fraud and collecting overpayments, including expenses incurred to review and investigate cases of possible fraud against the trust funds and collection agency fees and other costs incurred in recovering overpayments. Recovered funds must be returned to the appropriate trust funds.

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, 1995.

Passed the House April 19, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 282

[House Bill 1445]

HOSPITAL REGULATION AND INSPECTION

AN ACT Relating to hospital regulation and inspection; amending RCW 70.41.030, 18.106.010, 70.41.040, 70.41.120, and 74.42.600; adding a new section to chapter 70.41 RCW; and creating a new section.

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

Sec. 1. RCW 70.41.030 and 1989 c 175 s 127 are each amended to read as follows:

The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of hospitals, and rescind, amend, or modify such rules from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. To the extent possible, the department shall endeavor to make such minimum standards and rules consistent in format and general content with the applicable hospital survey standards of the joint commission on the accreditation of health care organizations. The department shall adopt standards that are at least equal to recognized applicable national standards pertaining to medical gas piping systems.

Sec. 2. RCW 18.106.010 and 1983 c 124 s 1 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 meaning:

(1) "Advisory board" means the state advisory board of plumbers;
 (2) "Department" means the department of labor and industries;
 (3) "Director" means the director of department of labor and industries;
 (4) "Journeyman plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter;

(5) "Medical gas piping" means oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, and medical vacuum systems;

(6) "Specialty plumber" means anyone who has been issued a specialty certificate of competency limited to installation, maintenance, and repair of the plumbing of single family dwellings, duplexes, and apartment buildings which do not exceed three stories;

~~((6))~~ (7) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems ~~((and))~~, liquid waste systems, and medical gas piping systems within a building: PROVIDED, That installation in a water system of water softening or water treatment equipment shall not be within the meaning of plumbing as used in this chapter.

Sec. 3. RCW 70.41.040 and 1985 c 213 s 18 are each amended to read as follows:

The enforcement of the provisions of this chapter and the standards, rules and regulations established under this chapter, shall be the responsibility of the department which shall cooperate with the joint commission on the accreditation of ~~((hospitals))~~ health care organizations. The department shall advise on the employment of personnel and the personnel shall be under the merit system or its successor.

Sec. 4. RCW 70.41.120 and 1985 c 213 s 21 are each amended to read as follows:

The department shall make or cause to be made at least yearly an inspection of all hospitals. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, comply with the regulations prescribed by the department.

No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals.

To avoid unnecessary duplication in inspections, the department shall coordinate with the department of social and health services when inspecting facilities over which both agencies have jurisdiction, the facilities including but not necessarily being limited to hospitals with both acute care and skilled nursing or psychiatric nursing functions.

Sec. 5. RCW 74.42.600 and 1987 c 476 s 28 are each amended to read as follows:

(1) In addition to the inspection required by chapter 18.51 RCW, the department shall inspect the facility for compliance with resident rights and direct care standards of this chapter. The department may inspect any and all other provisions randomly, by exception profiles, or during complaint investigations.

(2) If the facility has not complied with all the requirements of this chapter, the department shall notify the facility in writing that the facility is in noncompliance and describe the reasons for the facility's noncompliance and the department may impose penalties in accordance with RCW 18.51.060.

(3) To avoid unnecessary duplication in inspections, the department shall coordinate with the department of health when inspecting medicaid-certified or medicare-certified, or both, long-term care beds in hospitals for compliance with Titles XVIII or XIX of the social security act.

NEW SECTION. Sec. 6. A new section is added to chapter 70.41 RCW to read as follows:

Notwithstanding RCW 70.41.120, a hospital accredited by the joint commission on the accreditation of health care organizations is not subject to the annual inspection provided for in RCW 70.41.120 if:

(1) The department determines that the applicable survey standards of the joint commission on the accreditation of health care organizations are substantially equivalent to its own;

(2) It has been inspected by the joint commission on the accreditation of health care organizations within the previous twelve months; and

(3) The department receives directly from the joint commission on the accreditation of health care organizations or the hospital itself copies of the survey reports prepared by the joint commission on the accreditation of health care organizations demonstrating that the hospital meets applicable standards.

NEW SECTION. Sec. 7. The Washington state department of health shall study alternative strategies for achieving greater efficiency in the hospital building design and review process, including, but not necessarily limited to:

(1) Developing at the state level, with provision for input by local jurisdictions, a single point of building plan review and conflict resolution;

(2) Developing a process for joint conduct of building plan review by affected jurisdictions; and

(3) Reviewing the feasibility of developing a system whereby building inspectors are required to accept design decisions that are made at the time a building permit is granted, except for changes due to unforeseen circumstances.

The department shall report its findings and recommendations to the appropriate committees of the legislature by January 1, 1996.

Passed the House April 23, 1995.

Passed the Senate April 14, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 283

[Engrossed Substitute House Bill 1471]

HOMEOWNERS' ASSOCIATIONS

AN ACT Relating to homeowners' associations; and adding a new chapter to Title 64 RCW. Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations.

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

(1) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an

owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(2) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

NEW SECTION. Sec. 3. The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped.

NEW SECTION. Sec. 4. Unless otherwise provided in the governing documents, an association may:

- (1) Adopt and amend bylaws, rules, and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;
- (3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common areas;
- (7) Cause additional improvements to be made as a part of the common areas;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;

(10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;

(11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;

(12) Exercise any other powers conferred by the bylaws;

(13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(14) Exercise any other powers necessary and proper for the governance and operation of the association.

NEW SECTION. Sec. 5. (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause.

NEW SECTION. Sec. 6. Unless provided for in the governing documents, the bylaws of the association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(2) Election by the board of directors of the officers of the association as the bylaws specify;

(3) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(5) The method of amending the bylaws; and

(6) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate.

NEW SECTION. Sec. 7. (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. Not less than fourteen nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(2) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the

disclosure of information in violation of law or which is otherwise exempt from disclosure.

NEW SECTION. Sec. 8. Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

NEW SECTION. Sec. 9. (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds.

NEW SECTION. Sec. 10. Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party.

NEW SECTION. Sec. 11. Sections 1 through 10 of this act constitute a new chapter in Title 64 RCW.

Passed the House April 23, 1995.

Passed the Senate April 22, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 284

[Engrossed Substitute House Bill 1518]

TEACHERS—INTERNSHIP CREDIT

AN ACT Relating to internship credit for teachers; amending RCW 28A.415.020; adding a new section to chapter 28A.415 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that if students are to succeed in an increasingly competitive economy, they will need to be taught by teachers who are aware of the technological innovations and changes that are occurring throughout business, industry, and government. Having teachers who are more aware of these changes will lead to improvements in curriculum and instruction, thereby making public schools more relevant to the future career and personal needs of our students.

Sec. 2. RCW 28A.415.020 and 1990 c 33 s 415 are each amended to read as follows:

(1) Certificated personnel shall receive for each ten clock hours of approved in-service training attended the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(2) Certificated personnel shall receive for each ten clock hours of approved continuing education earned, as continuing education is defined by rule adopted by the state board of education, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(3) Certificated personnel shall receive for each forty clock hours of participation in an approved internship with a business, an industry, or government, as an internship is defined by rule of the state board of education in accordance with section 3 of this act, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(4) An approved in-service training program shall be a program approved by a school district board of directors, which meet standards adopted by the state board of education, and the development of said program has been participated in by an in-service training task force whose membership is the same as provided under RCW 28A.415.040, or a program offered by an education agency approved

to provide in-service for the purposes of continuing education as provided for under rules adopted by the state board of education, or both.

~~((4))~~ (5) Clock hours eligible for application to the salary schedule developed by the legislative evaluation and accountability program committee as described in subsections (1) and (2) of this section, shall be those hours acquired after August 31, 1987. Clock hours eligible for application to the salary schedule as described in subsection (3) of this section shall be those hours acquired after December 31, 1995.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.415 RCW to read as follows:

The state board of education shall establish rules for awarding clock hours for participation of certificated personnel in internships with business, industry, or government. To receive clock hours for an internship, the individual must demonstrate that the internship will provide beneficial skills and knowledge in an area directly related to his or her current assignment, or to his or her assignment for the following school year. An individual may not receive more than the equivalent of two college quarter credits for internships during a calendar-year period. The total number of credits for internships that an individual may earn to advance on the salary schedule developed by the legislative evaluation and accountability program committee or its successor agency is limited to the equivalent of fifteen college quarter credits.

NEW SECTION. Sec. 4. The legislative office on performance audit and fiscal analysis shall conduct an evaluation, by December 15, 1997, of internship credits granted to teachers to advance on the salary schedule as provided in section 2 of this act. This evaluation shall compare the efficacy of internship, in-service, and academic credits as recognized in the state salary allocation schedule in the omnibus appropriations act, in improving teacher effectiveness and productivity.

Passed the House April 19, 1995.

Passed the Senate April 14, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 285

[Engrossed Second Substitute House Bill 1557]

INSURANCE FRAUD

AN ACT Relating to insurance fraud; amending RCW 48.01.030, 48.18.460, 48.30.210, 48.30.220, 48.50.010, 48.50.020, 48.50.030, 48.50.040, 48.50.075, 48.80.020, 2.48.180, 9.12.010, 9A.72.010, 9A.72.030, 9A.76.020, 9A.82.010, and 18.130.190; reenacting and amending RCW 9.94A.320; adding a new section to chapter 42.17 RCW; adding a new section to chapter 9A.68 RCW; adding a new section to chapter 9A.76 RCW; adding a new chapter to Title 48 RCW; creating a new section; repealing RCW 9.91.090, 9A.82.903, 48.50.060, 48.50.080, and 49.44.070; 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 finds that the business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. The payment of kickbacks, bribes, or rebates for referrals to service providers, as has been occurring with increasing regularity in this state, results in inflated or fraudulent insurance claims, results in greater insurance costs for all citizens, and is contrary to the public interest. In particular, the process whereby "cappers" buy and sell insurance claims without the controls of professional licensing and discipline creates a fertile ground for illegal activity and has, in this state, resulted in frauds committed against injured claimants, insurance companies, and the public. Operations that engage in this practice have some or all of the following characteristics: Cappers, acting under an agreement or understanding that they will receive a pecuniary benefit, refer claimants with real or imaginary claims, injuries, or property damage to service providers. This sets off a chain of events that corrupts both the provision of services and casualty or property insurance for all citizens. This chain of events includes false claims for services through the use of false estimates of repair; false prescriptions of care or rehabilitative therapy; services that either do not occur or are provided by persons unqualified to provide the services; submission of false claims; submission of and demands for fraudulent costs, lost wages, pain and suffering, and the like; and other devices meant to result in false claims under casualty or property insurance policies or contracts, whether insured or self-insured, and either directly or through subrogation.

The legislature finds that combatting these practices requires laws carefully fashioned to identify practices that mimic customary business practices. The legislature does not intend this law to be used against medical and other business referral practices that are otherwise legal, customary, and unrelated to the furtherance of some or all of the corrupt practices identified in this chapter.

NEW SECTION. Sec. 2. The definitions set forth in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Casualty or property insurance" includes both the insurance under which a claim is filed and insurance that receives a claim through subrogation, and means insurance as defined in RCW 48.11.040 and 48.11.070 and includes self-insurance arrangements.

(2) "Claimant" means a person who has or is believed by an actor to have an insurance claim.

(3) "Group-buying arrangement" means an arrangement made by a membership organization having one hundred or more members in which the organization asks for or receives valuable consideration in exchange for referring its members to a service provider; the consideration asked for or received will be or is used to benefit the entire organization, not just one or more individuals in positions of power or influence in the organization; and reasonable efforts are made to disclose to affected members of the organization the nature of the

referral relationship, including the nature, extent, amount, and use of the consideration.

(4) "Health care services" means a service provided to a claimant for treatment of physical or mental illness or injury arising in whole or substantial part from trauma.

(5) "Insurance claim" means a claim for payment, benefits, or damages under a contract, plan, or policy of casualty or property insurance.

(6) "Legal provider" means an active member in good standing of the Washington state bar association, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law.

(7) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.

(8) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.

(9) "Trauma" means a physical injury or wound caused by external force or violence.

NEW SECTION. Sec. 3. (1) It is unlawful for a person:

(a) Knowing that the payment is for the referral of a claimant to a service provider, either to accept payment from a service provider or, being a service provider, to pay another; or

(b) To provide or claim or represent to have provided services to a claimant, knowing the claimant was referred in violation of (a) of this subsection.

(2) It is unlawful for a service provider to engage in a regular practice of waiving, rebating, giving, paying, or offering to waive, rebate, give, or pay all or any part of a claimant's casualty or property insurance deductible.

NEW SECTION. Sec. 4. In a proceeding under this chapter, it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense:

(1) The conduct alleged was authorized by the Rules of Professional Conduct or the Admission to Practice Rules for lawyers as adopted by the state supreme court, Washington business and professions licensing statutes, or rules adopted by the secretary of health or the director of licensing;

(2) The payment was an incidental nonmonetary gift or gratuity, or was purely social in nature;

(3) The conduct alleged was an exercise of a group-buying arrangement;

(4) The conduct alleged was a legal provider paying a service provider's bills from the proceeds of an insurance claim that included the bills;

(5) The conduct alleged was a legal provider paying for services of an expert witness, including reports, consultation, and testimony; or

(6) The conduct alleged was a service provider's purchase of advertising from an unrelated business that provides referrals from advertising for groups of

ten or more service providers that are not related to the advertising business and not related to each other.

NEW SECTION. Sec. 5. A violation of section 3 of this act constitutes trafficking in insurance claims. A single violation is a gross misdemeanor. Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony.

NEW SECTION. Sec. 6. Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this section is a preponderance of the evidence. An action under this section must be brought within three years after the violation of this chapter occurred.

NEW SECTION. Sec. 7. Whenever a service provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under section 6 of this act, the attorney general or the prosecuting attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

NEW SECTION. Sec. 8. A violation of this chapter is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this chapter is unprofessional conduct in violation of RCW 18.130.180.

NEW SECTION. Sec. 9. Each insurer licensed to write direct insurance in this state shall institute and maintain an insurance antifraud plan. An insurer licensed on the effective date of this act shall file its antifraud plan with the insurance commissioner no later than December 31, 1995. An insurer licensed after the effective date of this act shall file its antifraud plan within six months of licensure. An insurer shall file any change to the antifraud plan with the insurance commissioner within thirty days after the plan has been modified.

NEW SECTION. Sec. 10. An insurer's antifraud plan must establish specific procedures to:

(1) Prevent insurance fraud, including internal fraud involving employees or company representatives, fraud resulting from misrepresentation on applications for insurance coverage, and claims fraud;

(2) Review claims in order to detect evidence of possible insurance fraud and to investigate claims where fraud is suspected;

(3) Report fraud to appropriate law enforcement agencies and cooperate with those agencies in their prosecution of fraud cases;

(4) Undertake civil actions against persons who have engaged in fraudulent activities;

(5) Train company employees and agents in the detection and prevention of fraud.

NEW SECTION. Sec. 11. If after review of an insurer's antifraud plan, the commissioner finds that the plan does not comply with section 10 of this act, the commissioner may disapprove the antifraud plan. Notice of disapproval must include a statement of the specific reasons for disapproval. The insurer shall refile a plan disapproved by the commissioner within sixty days of the date of the notice of disapproval. The commissioner may audit insurers to ensure compliance with antifraud plans.

NEW SECTION. Sec. 12. Each insurer shall annually provide to the insurance commissioner a summary report on actions taken under its antifraud plan to prevent and combat insurance fraud. The report must also include, but not be limited to, measures taken to protect and ensure the integrity of electronic data-processing-generated data and manually compiled data, statistical data on the amount of resources committed to combating fraud, and the amount of fraud identified and recovered during the reporting period. The antifraud plans and summary of the insurer's antifraud activities are not public records and are exempt from chapter 42.17 RCW, are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation.

NEW SECTION. Sec. 13. An insurer that fails to file a timely antifraud plan or who does not make a good faith attempt to file an antifraud plan that complies with section 10 of this act, is subject to the penalty provisions of RCW 48.01.080, but no penalty may be imposed for the first filing made by an insurer under this chapter. An insurer that fails to follow the antifraud plan is subject to a civil penalty not to exceed ten thousand dollars for each violation, at the discretion of the commissioner after consideration of all relevant factors, including the willfulness of the violation.

NEW SECTION. Sec. 14. It is the duty of all peace officers, law enforcement officers, and law enforcement agencies within this state to investigate, enforce, and prosecute all violations of this chapter.

NEW SECTION. Sec. 15. A new section is added to chapter 42.17 RCW to read as follows:

Information provided under sections 9 through 12 of this act are exempt from disclosure under this chapter.

Sec. 16. RCW 48.01.030 and 1947 c 79 s .01.03 are each amended to read as follows:

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

Sec. 17. RCW 48.18.460 and 1949 c 190 s 26 are each amended to read as follows:

An insurer shall furnish, upon (~~written~~) request of any person claiming to have a loss under any insurance contract, forms of proof of loss for completion by such person. But such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion. If a person makes a claim under a policy of insurance, the insurer may require that the person be examined under an oath administered by a person authorized by state or federal law to administer oaths.

Sec. 18. RCW 48.30.210 and 1990 1st ex.s. c 3 s 10 are each amended to read as follows:

(~~Any agent, solicitor, broker, examining physician or other~~) A person who knowingly makes a false or (~~fraudulent~~) misleading statement or (~~representation~~) impersonation, or who willfully fails to reveal a material fact, in or relative to an application for insurance (~~to~~) to an insurer (~~transacting insurance under the provisions of this code, shall be~~), is guilty of a gross misdemeanor, and the license of any such (~~agent, solicitor, or broker who makes such a statement or representation~~) person may be revoked.

Sec. 19. RCW 48.30.220 and 1965 ex.s. c 70 s 25 are each amended to read as follows:

Any person, who, with intent to defraud or prejudice the insurer thereof, (~~wilfully~~) burns or in any manner injures, destroys, secretes, abandons, or disposes of any property which is insured at the time against loss or damage by fire, theft, (~~or~~) embezzlement, or (~~by~~) any other casualty, whether the same be the property of or in the possession of such person or any other person, under (~~such~~) circumstances not making the offense arson in the first degree, is guilty of a class C felony.

Sec. 20. RCW 48.50.010 and 1979 ex.s. c 80 s 1 are each amended to read as follows:

This chapter shall be known and may be cited as the (~~Arson~~) Insurance Fraud Reporting Immunity Act.

Sec. 21. RCW 48.50.020 and 1986 c 266 s 77 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) "Authorized agency" means a public agency or its official representative having legal authority to investigate criminal activity or the cause of a fire ~~((and))~~ or to initiate criminal proceedings ~~((or further investigations if the cause was not accidental))~~, including the following persons and agencies:

(a) The ~~((director))~~ department of community, trade, and economic development and the director of fire protection;

(b) The prosecuting attorney of the county where the ~~((fire))~~ criminal activity occurred;

(c) State, county, and local law enforcement agencies;

~~((d))~~ (d) The state attorney general ~~((when engaged in a prosecution which is or may be connected with the fire));~~

~~((d))~~ (e) The Federal Bureau of Investigation, or any other federal law enforcement agency; ~~((and~~

~~((e))~~ (f) The United States attorney's office ~~((when authorized or charged with investigation or prosecution concerning the fire)); and~~

(g) The office of the insurance commissioner.

(2) "Insurer" means any insurer, as defined in RCW 48.01.050 ~~((which insures against loss by fire, and includes insurers under the Washington F.A.I.R. plan))~~ and any self-insurer.

(3) "Relevant information" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of criminal activity or the cause of any fire more probable or less probable than it would be without the information.

Sec. 22. RCW 48.50.030 and 1979 ex.s. c 80 s 3 are each amended to read as follows:

(1) Any authorized agency may request, in writing, that an insurer release to the agency any or all relevant information or evidence which the insurer may have in its possession relating to ~~((a particular fire loss))~~ criminal activity, if such information or evidence is deemed important by the agency in its discretion.

(2) An insurer who has reason to believe that a person participated or is participating in criminal activity relating to a contract of insurance may report relevant information to an authorized agency.

(3) The information ~~((requested))~~ provided to an authorized agency under this section may include, without limitation:

(a) Pertinent insurance policy information relating to a ~~((fire loss))~~ claim under investigation and any application for such a policy;

(b) Policy premium payment records which are available;

(c) History of previous claims ~~((made by the insured))~~ in which the person was involved; and

(d) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence found in the investigation.

~~((2-A))~~ (4) The insurer receiving a request under subsection (1) of this section shall furnish all relevant information requested to the agency within a reasonable time, orally or in writing ~~((all relevant information requested)).~~

Sec. 23. RCW 48.50.040 and 1986 c 266 s 91 are each amended to read as follows:

(1) When an insurer has reason to believe that a fire loss reported to the insurer may be of other than accidental cause, the insurer shall notify the ~~((director))~~ department of community, trade, and economic development, through the director of fire protection, in the manner prescribed under RCW 48.05.320 concerning the circumstances of the fire loss, including any and all relevant material developed from the insurer's inquiry into the fire loss.

(2) Notification of the ~~((director))~~ department of community, trade, and economic development, through the director of fire protection, under subsection (1) of this section does not relieve the insurer of the duty to respond to a request for information from any other authorized agency and does not bar an insurer from other reporting under RCW 48.50.030(2).

Sec. 24. RCW 48.50.075 and 1981 c 320 s 2 are each amended to read as follows:

In denying a claim ~~((resulting from a fire))~~, an insurer who relies upon a written opinion from an authorized agency specifically enumerated in ~~((a) through (e) of))~~ RCW 48.50.020(1) (a) through (g) that ((the fire was caused by arson)) criminal activity that is related to that claim is being investigated, or a crime has been charged, and that the ((insured was responsible for the fire, shall not be)) claimant is a target of the investigation or has been charged with a crime, is not liable for bad faith or other noncontractual theory of damages as a result of this reliance.

Immunity under this section shall exist only so long as the incident for which the ~~((insured))~~ claimant may be responsible is under active investigation or prosecution, or the authorized agency states its position that the claim includes or is a result of ((arson for)) criminal activity in which the ((insured)) claimant was ((responsible)) a participant.

Sec. 25. RCW 48.80.020 and 1986 c 243 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) "Claim" means any attempt to cause a health care payer to make a health care payment.

(2) "Deceptive" means presenting a claim to a health care payer that contains a statement of fact or fails to reveal a material fact, leading the health care payer to believe that the represented or suggested state of affairs is other than it actually is. For the purposes of this chapter, the determination of what constitutes a material fact is a question of law to be resolved by the court.

(3) "False" means wholly or partially untrue or deceptive.

(4) "Health care payment" means a payment for health care services or the right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service.

(5) "Health care payer" means any insurance company authorized to provide health insurance in this state, any health care service contractor authorized under chapter 48.44 RCW, any health maintenance organization authorized under chapter 48.46 RCW, any legal entity which is self-insured and providing health care benefits to its employees, ~~((or))~~ and any insurer or other person responsible for paying for health care services.

(6) "Person" means an individual, corporation, partnership, association, or other legal entity.

(7) "Provider" means any person lawfully licensed or authorized to render any health service.

Sec. 26. RCW 2.48.180 and 1989 c 117 s 13 are each amended to read as follows:

~~((Any person who, not being an active member of the state bar, or who after he has been disbarred or while suspended from membership in the state bar, as by this chapter provided, shall))~~

(1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

~~((A nonlawyer practices law, or holds himself or herself out as entitled to practice law, (, shall, except as provided in RCW 19.154.100, be guilty of a misdemeanor. PROVIDED, HOWEVER, Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive relief or to punish as for contempt));~~

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor. Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW 18.130.180.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized by the Rules of Professional Conduct or the Admission to Practice Rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred.

Sec. 27. RCW 9.12.010 and 1915 c 165 s 1 are each amended to read as follows:

Every person who ~~((shall))~~ brings on his or her own behalf, or instigates, incites, or encourages another to bring, any false suit at law or in equity in any court of this state, with intent thereby to distress or harass a defendant ~~((therein; and every person, being an attorney or counselor at law, who shall personally, or through the agency of another, solicit employment as such attorney, in any suit pending or prospective, or, with intent to obtain such employment shall, directly or indirectly, loan any money or give or promise to give any money, property or other consideration to the person from whom such employment is sought; and every person who shall))~~ in the suit, or who serves or sends any paper or document purporting to be, or resembling a judicial process, that is not in fact a judicial process ~~((shall be)),~~ is guilty of a misdemeanor; and in case the

person offending is an attorney, he or she may, in addition thereto be disbarred from practicing law within this state.

Sec. 28. RCW 9.94A.320 and 1994 sp.s. c 7 s 510, 1994 c 275 s 20, and 1994 c 53 s 2 are each reenacted and amended to read as follows:

TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XIII	Murder 2 (RCW 9A.32.050)
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120)
XI	Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
X	Kidnapping 1 (RCW 9A.40.020) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Child Molestation 1 (RCW 9A.44.083) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a))
IX	Assault of a Child 2 (RCW 9A.36.130) Robbery I (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) Explosive devices prohibited (RCW 70.74.180) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Endangering life and property by explosives with threat to human being (RCW 70.74.270) Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)

- Controlled Substance Homicide (RCW 69.50.415)
 - Sexual Exploitation (RCW 9.68A.040)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII
- Arson 1 (RCW 9A.48.020)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
 - Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
 - Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII
- Burglary 1 (RCW 9A.52.020)
 - Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
 - Introducing Contraband 1 (RCW 9A.76.140)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
 - Child Molestation 2 (RCW 9A.44.086)
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
 - Involving a minor in drug dealing (RCW 69.50.401(f))
- VI
- Bribery (RCW 9A.68.010)
 - Manslaughter 2 (RCW 9A.32.070)
 - Rape of a Child 3 (RCW 9A.44.079)
 - Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)

- Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
- Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
- Incest I (RCW 9A.64.020(1))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
- Intimidating a Judge (RCW 9A.72.160)
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- V Criminal Mistreatment 1 (RCW 9A.42.020)
- Theft of a Firearm (RCW 9A.56.300)
- Reckless Endangerment 1 (RCW 9A.36.045)
- Rape 3 (RCW 9A.44.060)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Child Molestation 3 (RCW 9A.44.089)
- Kidnapping 2 (RCW 9A.40.030)
- Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Perjury 1 (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Sexually Violating Human Remains (RCW 9A.44.105)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))

- IV Residential Burglary (RCW 9A.52.025)
 Theft of Livestock 1 (RCW 9A.56.080)
 Robbery 2 (RCW 9A.56.210)
 Assault 2 (RCW 9A.36.021)
 Escape 1 (RCW 9A.76.110)
 Arson 2 (RCW 9A.48.030)
Commercial Bribery (section 29 of this act)
 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
 Malicious Harassment (RCW 9A.36.080)
 Threats to Bomb (RCW 9.61.160)
 Willful Failure to Return from Furlough (RCW 72.66.060)
 Hit and Run — Injury Accident (RCW 46.52.020(4))
 Vehicular Assault (RCW 46.61.522)
 Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(ii) through (iv))
 Influencing Outcome of Sporting Event (RCW 9A.82.070)
 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
 Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal Mistreatment 2 (RCW 9A.42.030)
 Extortion 2 (RCW 9A.56.130)
 Unlawful Imprisonment (RCW 9A.40.040)
 Assault 3 (RCW 9A.36.031)
 Assault of a Child 3 (RCW 9A.36.140)
 Custodial Assault (RCW 9A.36.100)
 Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
 Harassment (RCW 9A.46.020)
 Promoting Prostitution 2 (RCW 9A.88.080)
 Willful Failure to Return from Work Release (RCW 72.65.070)
 Burglary 2 (RCW 9A.52.030)
 Introducing Contraband 2 (RCW 9A.76.150)
 Communication with a Minor for Immoral Purposes (RCW 9.68A.090)

- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- II Unlawful Practice of Law (RCW 2.48.180)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property I (RCW 9A.56.150)
- Theft I (RCW 9A.56.030)
- Trafficking in Insurance Claims (section 3 of this act)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Health Care False Claims (RCW 48.80.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass I (RCW 9A.52.110)
- Escape from Community Custody (RCW 72.09.310)

Theft 2 (RCW 9A.56.040)
 Possession of Stolen Property 2 (RCW
 9A.56.160)
 Forgery (RCW 9A.60.020)
 Taking Motor Vehicle Without Permission
 (RCW 9A.56.070)
 Vehicle Prowl 1 (RCW 9A.52.095)
 Attempting to Elude a Pursuing Police Vehi-
 cle (RCW 46.61.024)
 Malicious Mischief 2 (RCW 9A.48.080)
 Reckless Burning 1 (RCW 9A.48.040)
 Unlawful Issuance of Checks or Drafts
 (RCW 9A.56.060)
 Unlawful Use of Food Stamps (RCW
 9.91.140 (2) and (3))
 False Verification for Welfare (RCW
 74.08.055)
 Forged Prescription (RCW 69.41.020)
 Forged Prescription for a Controlled Sub-
 stance (RCW 69.50.403)
 Possess Controlled Substance that is a Nar-
 cotic from Schedule III, IV, or V or
 Non-narcotic from Schedule I-V (ex-
 cept phencyclidine) (RCW
 69.50.401(d))

NEW SECTION. Sec. 29. A new section is added to chapter 9A.68 RCW to read as follows:

(1) For purposes of this section:

(a) "Claimant" means a person who has or is believed by an actor to have an insurance claim.

(b) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.

(c) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.

(d) "Trusted person" means:

(i) An agent, employee, or partner of another;

(ii) An administrator, executor, conservator, guardian, receiver, or trustee of a person or an estate, or any other person acting in a fiduciary capacity;

(iii) An accountant, appraiser, attorney, physician, or other professional adviser;

(iv) An officer or director of a corporation, or any other person who participates in the affairs of a corporation, partnership, or unincorporated association; or

(v) An arbitrator, mediator, or other purportedly disinterested adjudicator or referee.

(2) A person is guilty of commercial bribery if:

(a) He or she offers, confers, or agrees to confer a pecuniary benefit directly or indirectly upon a trusted person under a request, agreement, or understanding that the trusted person will violate a duty of fidelity or trust arising from his or her position as a trusted person;

(b) Being a trusted person, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself, herself, or another under a request, agreement, or understanding that he or she will violate a duty of fidelity or trust arising from his or her position as a trusted person; or

(c) Being an employee or agent of an insurer, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself or herself, or a person other than the insurer, under a request, agreement, or understanding that he or she will or a threat that he or she will not refer or induce claimants to have services performed by a service provider.

(3) It is not a defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because the person had not yet assumed his or her position, lacked authority, or for any other reason.

(4) Commercial bribery is a class B felony.

Sec. 30. RCW 9A.72.010 and 1981 c 187 s 1 are each amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;

(b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he or she made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is certified or declared to be true under penalty of perjury as provided in RCW 9A.72.085.

(3) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision or when the oath is administered by a person authorized by state or federal law to administer oaths;

(4) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(5) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(6) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

Sec. 31. RCW 9A.72.030 and 1975 1st ex.s. c 260 s 9A.72.030 are each amended to read as follows:

(1) A person is guilty of perjury in the second degree if, in an examination under oath under the terms of a contract of insurance, or with intent to mislead a public servant in the performance of his or her duty, he or she makes a materially false statement, which he or she knows to be false under an oath required or authorized by law.

(2) Perjury in the second degree is a class C felony.

NEW SECTION. Sec. 32. A new section is added to chapter 9A.76 RCW to read as follows:

A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

Sec. 33. RCW 9A.76.020 and 1994 c 196 s 1 are each amended to read as follows:

(1) A person is guilty of obstructing a law enforcement officer if the person

~~(a) Willfully makes a false or misleading statement to a law enforcement officer who has detained the person during the course of a lawful investigation or lawful arrest; or~~

~~(b))~~ willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.

(2) "Law enforcement officer" means any general authority, limited authority, or specially commissioned Washington peace officer or federal peace officer as those terms are defined in RCW 10.93.020, and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes.

(3) Obstructing a law enforcement officer is a gross misdemeanor.

Sec. 34. RCW 9A.82.010 and 1994 c 218 s 17 are each amended to read as follows:

Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(2) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(3) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(4) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(5) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(6) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(7) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(8) "Dealer in property" means a person who buys and sells property as a business.

(9) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(10) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(11) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(12) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(13) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(14) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

- (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and 9A.56.080;
- (f) Child selling or child buying, as defined in RCW 9A.64.030;
- (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;
- (h) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- (j) Extortionate extension of credit, as defined in RCW 9A.82.020;
- (k) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;
- (l) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;
- (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- (n) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;
- (o) Trafficking in stolen property, as defined in RCW 9A.82.050;
- (p) Leading organized crime, as defined in RCW 9A.82.060;
- (q) Money laundering, as defined in RCW 9A.83.020;
- (r) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;
- (s) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;
- (t) Promoting pornography, as defined in RCW 9.68.140;
- (u) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
- (v) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;
- (w) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- (x) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
- (y) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
- (z) A pattern of equity skimming, as defined in RCW 61.34.020; ((e))

(aa) Commercial telephone solicitation in violation of RCW 19.158.040(1);
(bb) Trafficking in insurance claims, as defined in section 3 of this act;
(cc) Unlawful practice of law, as defined in RCW 2.48.180;
(dd) Commercial bribery, as defined in section 29 of this act;
(ee) Health care false claims, as defined in RCW 48.80.030; or
(ff) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7).

(15) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(16) "Records" means any book, paper, writing, record, computer program, or other material.

(17) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(18) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

(19)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest shall be considered to be located where the real property owned by the trustee is located.

(20) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(21)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under subsection (21)(a) (i) or (ii) of this section.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

Sec. 35. RCW 18.130.190 and 1993 c 367 s 19 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.

(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 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.

(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.

(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 for a single violation. Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. 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.

NEW SECTION. Sec. 36. The Washington State Bar Association is requested to submit to the appropriate committees of the state senate and house of representatives by November 1995, a report on the recommendations of its task force on nonlawyer practice, including any recommendations for legislation or proposed court rules.

NEW SECTION. Sec. 37. The following acts or parts of acts are each repealed:

- (1) RCW 9.91.090 and 1992 c 7 s 17, 1981 c 203 s 4, & 1909 c 249 s 384;
- (2) RCW 9A.82.903 and 1985 c 455 s 22;
- (3) RCW 48.50.060 and 1979 ex.s. c 80 s 6;
- (4) RCW 48.50.080 and 1979 ex.s. c 80 s 8; and
- (5) RCW 49.44.070 and 1909 c 249 s 427.

NEW SECTION. Sec. 38. Sections 1 through 14 of this act constitute a new chapter in Title 48 RCW.

NEW SECTION. Sec. 39. 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, 1995.

Passed the House April 19, 1995.
 Passed the Senate April 10, 1995.
 Approved by the Governor May 9, 1995.
 Filed in Office of Secretary of State May 9, 1995.

CHAPTER 286

[Substitute House Bill 1430]

PUBLIC EMPLOYEES' RETIREMENT SYSTEM—ESTABLISHMENT OF SERVICE CREDIT FOR PRIOR EMPLOYMENT

AN ACT Relating to exempting employers with qualified retirement plans from additional contributions; amending RCW 41.40.062 and 41.40.160; reenacting and amending RCW 41.40.010; adding new sections to chapter 41.40 RCW; and repealing RCW 41.40.045.

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

Sec. I. RCW 41.40.010 and 1994 c 298 s 2, 1994 c 247 s 5, 1994 c 197 s 23, and 1994 c 177 s 8 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; 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. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(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. Compensation that

a member receives for being in standby status is also compensation earnable, subject to the conditions of this subsection. A member is in standby status when not being paid for time actually worked and only when both of the following conditions exist: (i) The member is required to be present at, or in the immediate vicinity of, a specified location; and (ii) the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is regular salary for the purposes of RCW 41.50.150(2).

(A) "Compensation earnable" for plan I members also includes the following actual or imputed payments, which are not paid for personal services:

(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 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;

(II) 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.

(III) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(IV) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038; and

(V) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670.

(B) "Compensation earnable" does not include:

(I) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(II) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(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 or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. Compensation that a member receives for being in standby status is also compensation earnable, subject to the conditions of this subsection. A member is in standby status when not being paid for time actually worked and only when both of the following conditions exist: (i) The member is required to be present at, or in the immediate vicinity of, a specified location; and (ii) the

employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is regular salary for the purposes of RCW 41.50.150(2).

"Compensation earnable" for plan II members also includes the following actual or imputed payments, which are not paid for personal services:

(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 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;

(B) 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 (b)(ii)(B)(II) of this subsection is greater than compensation earnable under (b)(ii)(B)(I) of this subsection shall be paid by the member for both member and employer contributions;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038; and

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670.

(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. Time spent in standby status, whether compensated or not, is not service.

(i) 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.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If 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.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan I "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(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. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) 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.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If 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.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan II "forty-five days" as

used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(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 or her 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))~~ for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under section 2 or 3 of this act;

(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, including any amount paid under RCW 41.50.165(2), 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 person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member. A person is in receipt of a retirement allowance as defined in subsection (21) of this section or other benefit as provided by this chapter when the department mails, causes to be mailed, or otherwise transmits the retirement allowance warrant.

(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.

(35) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(36) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(37) "Index B" means the index for the year prior to index A.

(38) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(39) "Adjustment ratio" means the value of index A divided by index B.

NEW SECTION. Sec. 2. A new section is added to chapter 41.40 RCW under the subchapter heading "PROVISIONS APPLICABLE TO PLAN I AND PLAN II" to read as follows:

Except as qualified by RCW 41.40.023, for employers that were admitted into the retirement system before the effective date of this act, membership service may be established for the employer's former employees who are active members of the system if the member or member's former employer pays an amount equal to the employer and member contributions which would have been paid to the retirement system on account of such service to the retirement system. Payment shall be made prior to the retirement of such member.

Payments submitted by the member under this section shall be placed in the member's individual account in the members' savings fund and be treated as any other contribution made by the member, with the exception that the contributions submitted by the member 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.

NEW SECTION. Sec. 3. A new section is added to chapter 41.40 RCW under the subchapter heading "PROVISIONS APPLICABLE TO PLAN I AND PLAN II" to read as follows:

(1) This section applies to the establishment of membership service with employers admitted to the retirement system after the effective date of this act.

(2) For current employees, membership service may be established for periods of employment with an employer prior to the employer's admission into the retirement system by making the payments required by this section.

The employer must select one of the options in this subsection and apply it uniformly, except as provided in subsection (3) of this section. The required payment shall include the total member and employer contributions that would have been required from the date of each current member's hire.

(a) Option A: The employer makes all the required payments within fifteen years from the date of the employer's admission.

(b) Option B: The employer makes a portion of the required payments and the member pays the balance. The employer shall not be required to make its payments until the member has made his or her payments. Each member shall have the option to purchase the membership service.

(c) Option C: The member makes all of the required payments. Each member shall have the option to purchase the membership service.

All payments under options B and C of this subsection must be completed within five years from the date of the employer's admission, or prior to the retirement of the member, whichever occurs sooner. A member may not receive membership service credit under option B or C of this subsection until all required payments have been made.

(3) An employer shall not be required to purchase membership service under option A or B for periods of employment for which the employer made contributions to a qualified retirement plan as defined by 26 U.S.C. Sec. 401(a), if the contributions plus interest accrued cannot be transferred to the retirement

system. If the employer does not purchase the membership credit under this subsection, the member may purchase the membership service under subsection (2)(c) of this section.

(4) A former employee who is an active member of the system and is not covered by subsection (2) of this section may establish membership service by making the required payments under subsection (2)(c) of this section prior to the retirement of the member.

(5) All payments made by the member under this section shall be placed in the member's individual account in the members' savings fund.

Sec. 4. RCW 41.40.062 and 1991 c 35 s 93 are each amended to read as follows:

(1) The members and appointive and elective officials of any political subdivision or association of political subdivisions of the state may become members of the retirement system by the approval of the local legislative authority.

(2) On and after September 1, 1965, every school district of the state of Washington shall be an employer under this chapter. Every member of each school district who is eligible for membership under RCW 41.40.023 shall be a member of the retirement system and participate on the same basis as a person who first becomes a member through the admission of any employer into the retirement system on and after April 1, 1949.

~~((3) Each political subdivision becoming an employer under the meaning of this chapter shall make contributions to the funds of the retirement system as provided in RCW 41.50.250, 41.40.045, and 41.40.048 and its employees shall contribute to the employees' savings fund at the rate established under the provisions of RCW 41.40.330. In addition to the foregoing requirement, where the political subdivision becoming an employer under this section has its own retirement plan, any of the employee members thereof who may elect to transfer to this retirement system may, if permitted by the plan, withdraw all or any part of their employees' contributions to the former plan and transfer the funds to the employees' savings fund at the time of their transfer of membership. Any portion of the employees' savings fund not withdrawn shall be transferred by the employer to the retirement system over a period not to exceed fifteen years. The length of the transfer period and the method of payment to be utilized during that period shall be established by agreement between the department and the political subdivision. Employers making deferred payments of employee funds under this section shall transfer an additional amount equal to the interest that would have been credited to each employee's savings fund had his or her contributions been transferred to the state retirement system's employee savings fund on the date the political subdivision became an employer under this section. Any funds remaining in the employer's former retirement plan after all obligations of the plan have been provided for, as evidenced by appropriate actuarial study, shall be disposed of by the governing body of the political subdivision in such manner~~

~~as it deems appropriate. For the purpose of administering and interpreting this chapter the department may substitute the names of political subdivisions of the state for the "state" and employees of the subdivisions for "state employees" wherever those terms appear in this chapter. The department may also alter any dates mentioned in this chapter for the purpose of making the provisions of the chapter applicable to the entry of any political subdivisions into the system. Any member transferring employment to another employer which is covered by the retirement system may continue as a member without loss of previously earned pension and annuity benefits. The department shall keep accounts as are necessary to show the contributions of each political subdivision to the benefit account fund and shall have the power to debit and credit the various accounts in accordance with the transfer of the members from one employer to another.~~

~~(4) Employees of a political subdivision, maintaining its own retirement system, who have been transferred to a health district formed pursuant to chapter 70.46 RCW, but who have been allowed to remain members of the political subdivision's retirement system may be transferred as a group to the Washington public employees' retirement system. This transfer may be made by the action of the legislative authority of the political subdivision maintaining its own retirement system. This transfer shall include employer's and member's funds in the transferring municipalities' retirement system.~~

~~(4) Employees of a political subdivision, maintaining its own retirement system, heretofore transferred to a joint airport operation of two municipalities pursuant to chapter 14.08 RCW, may be transferred as a group to the Washington public employees' retirement system. This transfer may be made by the action of the legislative authority of the political subdivision maintaining its own retirement system. This transfer shall include employer's and member's funds in the transferring municipalities' retirement system.)~~

Sec. 5. RCW 41.40.160 and 1991 c 35 s 77 are each amended to read as follows:

(1) Subject to the provisions of RCW 41.40.150, at retirement the total service credited to a member shall consist of all membership service and, if he or she is an original member, all of the certified prior service.

(2) Employees of a public utility or other private enterprise all or any portion of which has been heretofore or may be hereafter acquired by a public agency as a matter of public convenience and necessity, where it is in the public interest to retain the trained personnel of such enterprise, all service to that enterprise shall, upon the acquiring public agency becoming an employer as defined in RCW 41.40.010(4) be credited on the same basis as if rendered to the said employer: PROVIDED, That this shall apply only to those employees who were in the service of the enterprise at or prior to the time of acquisition by the public agency and who remain in the service of the acquiring agency until they attain membership in the state employees' retirement system; and to those employees who were in the service of the enterprise at the time of acquisition by

the public agency and subsequently attain membership through employment with any participating agency: PROVIDED FURTHER, In the event that the acquiring agency is an employer at the time of the acquisition, employer's contributions in connection with members achieving service credit hereunder shall be made on the same basis as set forth in RCW 41.40.045 and 41.40.048 for an employer admitted after April 1, 1949, and before the effective date of this act, and on the same basis as set forth in section 3 of this act for an employer admitted after the effective date of this act.

NEW SECTION. Sec. 6. RCW 41.40.045 and 1989 c 273 s 22, 1986 c 268 s 4, 1973 1st ex.s. c 190 s 13, 1972 ex.s. c 151 s 14, 1971 ex.s. c 271 s 11, 1963 c 174 s 15, 1961 c 291 s 11, & 1957 c 231 s 4 are each repealed.

Passed the House April 19, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 287

[Substitute House Bill 1560]

FUEL TAX EVASION

AN ACT Relating to evasion of fuel tax; amending RCW 82.36.010, 82.36.380, 82.38.020, 82.38.270, and 9A.04.080; and prescribing penalties.

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

Sec. 1. RCW 82.36.010 and 1993 c 54 s 1 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;

(17) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement, misrepresentation of fact, or other act of deception; or

(b) An intentional: Omission, failure to file a return or report, or other act of deception.

Sec. 2. RCW 82.36.380 and 1961 c 15 s 82.36.380 are each amended to read as follows:

~~((Any person failing to pay the tax as herein provided, or violating any of the other provisions of this chapter, or making any false statement, or concealing any material fact in any report, record, affidavit, or claim provided for herein, shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.))~~

(1) It is unlawful for a person or corporation to evade a tax or fee imposed under this chapter.

(2) Evasion of taxes or fees under this chapter is a class C felony under chapter 9A.20 RCW. In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the transportation fund of the state.

Sec. 3. RCW 82.38.020 and 1994 c 262 s 22 are each amended to read as follows:

As ((hereinafter)) used in this chapter:

(1) "Person" means every natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

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

(3) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(4) "Motor vehicle" means every self-propelled vehicle designed for operation upon land utilizing special fuel as the means of propulsion.

(5) "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined in chapter 82.36 RCW.

(6) "Bulk storage" means the placing of special fuel by a special fuel dealer into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Special fuel dealer" means any person engaged in the business of delivering special fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him, or into bulk storage facilities for subsequent use in a motor vehicle. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(8) "Special fuel user" means any person purchasing special fuel into bulk storage without payment of the special fuel tax for subsequent use in a motor vehicle, or any person engaged in interstate commercial operation of motor vehicles any part of which is within this state.

(9) "Service station" means any location at which fueling of motor vehicles is offered to the general public.

(10) "Unbonded service station" means any service station at which an unbonded special fuel dealer regularly makes sales of special fuel by means of delivery thereof into the fuel supply tanks of motor vehicles.

(11) "Bond" means: (a) A bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the provisions of chapter 48.28 RCW which bond shall be payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations of such dealer, arising out of this chapter; or (b) a deposit with the state treasurer by the special fuel dealer or special fuel user, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Washington, or any county of said state, of an actual market value not less than the amount so fixed by the department; or (c) such other instruments as the department may determine and prescribe by rule to protect the interests of the state and to insure compliance of the requirements of this chapter.

(12) "Lessor" means any person (a) whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public, and (b) who maintains established places of business and whose lease or rental contracts require such motor vehicles to be returned to the established places of business.

(13) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(14) "Standard pressure and temperature" means fourteen and seventy-three hundredths pounds of pressure per square inch at sixty degrees Fahrenheit.

(15) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement, misrepresentation of fact, or other act of deception; or

(b) An intentional: Omission, failure to file a return or report, or other act of deception.

Sec. 4. RCW 82.38.270 and 1979 c 40 s 19 are each amended to read as follows:

~~((It shall be unlawful for any person to:~~

~~(1) Refuse, or knowingly and intentionally fail to make and file any statement required by this chapter in the manner or within the time required;~~

~~(2) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to make any false statement or conceal any material fact in any record, return, or affidavit provided for in this chapter;~~

~~(3) Conduct any activities requiring a license under this chapter without a license or after a license has been suspended, surrendered, canceled, or revoked;~~

~~(4) Fail to keep and maintain the books and records required by this chapter;~~

~~(5) Divert special fuel purchased for a nontaxable use to a use subject to the taxes imposed by this chapter without payment of the taxes as required by this chapter.~~

~~Except as otherwise provided by law, any person violating any of the provisions of this chapter shall be guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, or imprisonment for not more than one year, or both.~~

~~The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this chapter.)) (1) It is unlawful for a person or corporation to evade a tax or fee imposed under this chapter.~~

(2) Evasion of taxes or fees under this chapter is a class C felony under chapter 9A.20 RCW. In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the transportation fund of the state.

Sec. 5. RCW 9A.04.080 and 1993 c 214 s 1 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, 9A.44.100(1)(b), 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, 82.36, or 82.38 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 House April 23, 1995.

Passed the Senate April 22, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 288

[Substitute House Bill 1610]

VICTIMS—INVOLVEMENT IN PROSECUTION OF CRIMINAL CASES

AN ACT Relating to increasing the involvement of victims in the prosecution of criminal cases; amending RCW 9.94A.080 and 9.94A.090; and reenacting and amending RCW 9.94A.440.

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

Sec. 1. RCW 9.94A.080 and 1981 c 137 s 8 are each amended to read as follows:

The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

- (1) Move for dismissal of other charges or counts;
- (2) Recommend a particular sentence within the sentence range applicable to the offense or offenses to which the offender pled guilty;
- (3) Recommend a particular sentence outside of the sentence range;
- (4) Agree to file a particular charge or count;
- (5) Agree not to file other charges or counts; or
- (6) Make any other promise to the defendant, except that in no instance may the prosecutor agree not to allege prior convictions.

In a case involving a crime against persons as defined in RCW 9.94A.440, the prosecutor shall make reasonable efforts to inform the victim of the violent offense of the nature of and reasons for the plea agreement, including all offenses the prosecutor has agreed not to file, and ascertain any objections or comments the victim has to the plea agreement.

The court shall not participate in any discussions under this section.

Sec. 2. RCW 9.94A.090 and 1984 c 209 s 4 are each amended to read as follows:

(1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to RCW 9.94A.080, they shall at the time of the defendant's plea state to the court, on the record, the nature of the agreement and the reasons for the agreement. The prosecutor shall inform the court on the record whether the victim or victims of all crimes against persons, as defined in RCW 9.94A.440, covered by the plea agreement have expressed any objections to or comments on the nature of and reasons for the plea agreement. The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards. If the court determines it is not consistent with the interests of justice and with the prosecuting standards, the court shall, on the record, inform the defendant and the prosecutor that they are not bound by the agreement and that the defendant may withdraw the defendant's plea of guilty, if one has been made, and enter a plea of not guilty.

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea.

Sec. 3. RCW 9.94A.440 and 1992 c 145 s 11 and 1992 c 75 s 5 are each reenacted and amended to read as follows:

(1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) **Contrary to Legislative Intent** - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) **Antiquated Statute** - It may be proper to decline to charge where the statute in question is antiquated in that:

- (i) It has not been enforced for many years; and
- (ii) Most members of society act as if it were no longer in existence; and
- (iii) It serves no deterrent or protective purpose in today's society; and
- (iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) **De Minimus Violation** - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) **Confinement on Other Charges** - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) **Pending Conviction on Another Charge** - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.120(7).

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder

1st Degree Murder

2nd Degree Murder

1st Degree Kidnaping

1st Degree Assault

1st Degree Assault of a Child

1st Degree Rape

1st Degree Robbery

1st Degree Rape of a Child

1st Degree Arson

2nd Degree Kidnaping

2nd Degree Assault

2nd Degree Assault of a Child

2nd Degree Rape

2nd Degree Robbery

1st Degree Burglary

1st Degree Manslaughter

2nd Degree Manslaughter

1st Degree Extortion

Indecent Liberties

Incest

2nd Degree Rape of a Child

Vehicular Homicide

Vehicular Assault

3rd Degree Rape

3rd Degree Rape of a Child

1st Degree Child Molestation

2nd Degree Child Molestation

3rd Degree Child Molestation

2nd Degree Extortion

1st Degree Promoting Prostitution

Intimidating a Juror

Communication with a Minor

Intimidating a Witness

Intimidating a Public Servant

Bomb Threat (if against person)

3rd Degree Assault
3rd Degree Assault of a Child
Unlawful Imprisonment
Promoting a Suicide Attempt
Riot (if against person)

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson
1st Degree Escape
2nd Degree Burglary
1st Degree Theft
1st Degree Perjury
1st Degree Introducing Contraband
1st Degree Possession of Stolen Property
Bribery
Bribing a Witness
Bribe received by a Witness
Bomb Threat (if against property)
1st Degree Malicious Mischief
2nd Degree Theft
2nd Degree Escape
2nd Degree Introducing Contraband
2nd Degree Possession of Stolen Property
2nd Degree Malicious Mischief
1st Degree Reckless Burning
Taking a Motor Vehicle without Authorization
Forgery
2nd Degree Perjury
2nd Degree Promoting Prostitution
Tampering with a Witness
Trading in Public Office
Trading in Special Influence
Receiving/Granting Unlawful Compensation
Bigamy
Eluding a Pursuing Police Vehicle
Willful Failure to Return from Furlough
Escape from Community Custody
Riot (if against property)
Thefts of Livestock

ALL OTHER UNCLASSIFIED FELONIES**Selection of Charges/Degree of Charge**

(1) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

- (a) Will significantly enhance the strength of the state's case at trial; or
- (b) Will result in restitution to all victims.

(2) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

- (a) Charging a higher degree;
- (b) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

GUIDELINES/COMMENTARY:**Police Investigation**

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

- (1) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (2) The completion of necessary laboratory tests; and
- (3) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

- (1) Probable cause exists to believe the suspect is guilty; and
- (2) The suspect presents a danger to the community or is likely to flee if not apprehended; or
- (3) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

- (1) Polygraph testing;
- (2) Hypnosis;
- (3) Electronic surveillance;
- (4) Use of informants.

Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions.

Passed the House April 19, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 289

[Substitute House Bill 1660]

DEPARTMENT OF LABOR AND INDUSTRIES INSPECTIONS AND APPROVALS

AN ACT Relating to department of labor and industries inspections and approvals; and amending RCW 43.22.360 and 43.22.480.

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

Sec. 1. RCW 43.22.360 and 1970 ex.s. c 27 s 3 are each amended to read as follows:

(1) Plans and specifications of each model or production prototype of a mobile home, commercial coach and/or recreational vehicle showing body and frame design, construction, plumbing, heating and electrical specifications and data shall be submitted to the department of labor and industries for approval and recommendations with respect to compliance with the regulations and standards of each of such agencies. When plans have been submitted and approved as aforesaid, no changes or alterations shall be made to body and frame design, construction, plumbing, heating or electrical installations or specifications shown thereon in any mobile home, commercial coach or recreational vehicle without prior written approval of the department of labor and industries.

(2) The director may adopt rules that provide for approval of a plan that is certified as meeting state requirements or the equivalent by a professional who

is licensed or certified in a state whose licensure or certification requirements meet or exceed Washington requirements.

Sec. 2. RCW 43.22.480 and 1989 c 134 s 1 are each amended to read as follows:

(1) The department shall adopt and enforce rules that protect the health, safety, and property of the people of this state by assuring that all factory built housing or factory built commercial structures are structurally sound and that the plumbing, heating, electrical, and other components thereof are reasonably safe. The rules shall be reasonably consistent with recognized and accepted principles of safety and structural soundness, and in adopting the rules the department shall consider, so far as practicable, the standards and specifications contained in the uniform building, plumbing, and mechanical codes, including the barrier free code and the Washington energy code as adopted by the state building code council pursuant to chapter 19.27A RCW, and the national electrical code, including the state rules as adopted pursuant to chapter 19.28 RCW and published by the national fire protection association.

(2) The department shall set a schedule of fees which will cover the costs incurred by the department in the administration and enforcement of RCW 43.22.450 through 43.22.490.

(3) The director may adopt rules that provide for approval of a plan that is certified as meeting state requirements or the equivalent by a professional who is licensed or certified in a state whose licensure or certification requirements meet or exceed Washington requirements.

Passed the House April 19, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 290

[Substitute House Bill 1669]

TOURISM PROMOTION—USE OF LODGING TAX FOR

AN ACT Relating to the use of hotel, motel, and related businesses tax receipts for tourist promotional structures; and amending RCW 67.28.210 and 67.28.270.

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

Sec. I. RCW 67.28.210 and 1994 c 290 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 or on Baker Bay with a population of not less than eight hundred and the county in which such a city is located, a city bordering on the Skagit river with a population of not less than twenty thousand, or any city within a county made up entirely of islands may use the proceeds of such taxes for funding special events or festivals, or for the acquisition, construction, or operation of publicly owned tourist promotional infrastructures, structures, or buildings including but not limited to an ocean beach boardwalk, public docks, and viewing towers: PROVIDED FURTHER, That any county which imposes a tax under RCW 67.28.182 or any city with a population less than fifty thousand in such county 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: PROVIDED FURTHER, That any county made up entirely of islands, and any city or town that 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: PROVIDED FURTHER, That any city or county may use the proceeds of such taxes for funding a civic festival, if the following conditions are met: The festival is a community-wide event held not more than once annually; the festival is approved by the city, town, or county in which it is held; the festival is sponsored by an exempt organization defined in section 501(c)(3), (4), or (6) of the federal internal revenue code; the festival provides family-oriented events suiting a broad segment of the community; and the proceeds of such taxes are used solely for advertising and promotional materials intended to attract overnight visitors.

Sec. 2. RCW 67.28.270 and 1991 c 357 s 4 are each amended to read as follows:

In addition to the other uses authorized in this chapter, any city with a population of not less than one thousand people located on one of the San Juan islands or the county within which such city is located may impose the tax as

provided in RCW 67.28.180, and use the ((tax)) proceeds from that tax as provided herein for the acquisition, construction, or operation of publicly owned facilities that are used either for county fairs occurring no more than once a year and not extending over a period of more than seven days or to mitigate the impacts of tourism. Mitigation may include paying all or any part of the cost of acquisition, construction, or operation of public information and educational facilities designed to inform visitors of the historical, cultural, ecological, and environmental resources of the county; of day use parks used by visitors; of kayak and canoe access to public tidelands; of rest, information, and assembly areas for bicycle visitors; of special signage to inform visitors of local points of interest; and of sport and recreational facilities that provide activities of interest to visitors.

Passed the House April 20, 1995.

Passed the Senate April 14, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 291

[Substitute House Bill 1680]

INTEREST ON COURT FINES

AN ACT Relating to interest on court fines; and amending RCW 3.02.045, 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, 10.82.090, and 36.18.190.

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

Sec. 1. RCW 3.02.045 and 1994 c 301 s 1 are each amended to read as follows:

(1) Courts of limited jurisdiction may use collection agencies under chapter 19.16 RCW for purposes of collecting unpaid penalties on infractions, criminal fines, costs, assessments, civil judgments, or forfeitures that have been imposed by the courts. Courts of limited jurisdiction may enter into agreements with one or more attorneys or collection agencies for collection of outstanding penalties, fines, costs, assessments, and forfeitures. These agreements may specify the scope of work, remuneration for services, and other charges deemed appropriate. Such agreements may authorize collection agencies to retain all or any portion of the interest collected on these accounts.

(2) Courts of limited jurisdiction may use credit cards or debit cards for purposes of billing and collecting unpaid penalties, fines, costs, assessments, and forfeitures so imposed. Courts of limited jurisdiction may enter into agreements with one or more financial institutions for the purpose of the collection of penalties, fines, costs, assessments, and forfeitures. The agreements may specify conditions, remuneration for services, and other charges deemed appropriate.

(3) Servicing of delinquencies by collection agencies or by collecting attorneys in which the court retains control of its delinquencies shall not constitute assignment of debt.

(4) For purposes of this section, the term debt shall include penalties, fines, costs, assessments, or forfeitures imposed by the courts.

(5) The court may assess as court costs the moneys paid for remuneration for services or charges paid to collecting attorneys, to collection agencies, or, in the case of credit cards, to financial institutions.

Sec. 2. RCW 3.46.120 and 1988 c 169 s 1 are each amended to read as follows:

(1) All money received by the clerk of a municipal department including penalties, fines, bail forfeitures, fees and costs shall be paid by the clerk to the city treasurer.

(2) The city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Sec. 3. RCW 3.50.100 and 1988 c 169 s 2 are each amended to read as follows:

(1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs, fines, forfeitures and other money imposed by any municipal court for the violation of any municipal or town ordinances shall be collected by the court clerk and, together with any other noninterest revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or deposited in such other funds as may be designated by the laws of the state of Washington.

(2) The city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Sec. 4. RCW 35.20.220 and 1988 c 169 s 6 are each amended to read as follows:

(1) The chief clerk, under the supervision and direction of the court administrator of the municipal court, shall have the custody and care of the books, papers and records of said court; he shall be present by himself or deputy during the session of said court, and shall have the power to swear all witnesses and jurors, and administer oaths and affidavits, and take acknowledgments. He shall keep the records of said court, and shall issue all process under his hand and the seal of said court, and shall do and perform all things and have the same powers pertaining to his office as the clerks of the superior courts have in their office. He shall receive all fines, penalties and fees of every kind, and keep a full, accurate and detailed account of the same; and shall on each day pay into the city treasury all money received for said city during the day previous, with a detailed account of the same, and taking the treasurer's receipt therefor.

(2) The city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county,

city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Sec. 5. RCW 3.62.020 and 1988 c 169 s 3 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fees, fines, forfeitures and penalties assessed and collected in whole or in part by district courts, except costs, fines, forfeitures and penalties assessed and collected, in whole or in part, because of the violation of city ordinances, shall be remitted by the clerk of the district court to the county treasurer at least monthly, together with a financial statement as required by the division of municipal corporations, noting the information necessary for crediting of such funds as required by law.

(2) The county treasurer shall remit thirty-two percent of the noninterest money received under subsection (1) of this section except certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received by the county treasurer under subsection (1) of this section shall be deposited in the county current expense fund.

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

Sec. 6. RCW 3.62.040 and 1988 c 169 s 4 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fines, forfeitures and penalties assessed and collected, in whole or in part, by district courts because of violations of city ordinances shall be remitted by the clerk of the district court at least monthly directly to the treasurer of the city wherein the violation occurred.

(2) The city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs, to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) All money collected for city parking infractions shall be remitted by the clerk of the district court at least monthly to the city treasurer for deposit in the city's general fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Sec. 7. RCW 10.82.090 and 1989 c 276 s 3 are each amended to read as follows:

Financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. All

nonrestitution interest retained by the court shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

Sec. 8. RCW 36.18.190 and 1994 c 185 s 9 are each amended to read as follows:

Superior court clerks may contract with collection agencies or may use county collection services for the collection of unpaid court obligations. The costs for the agencies or county services shall be paid by the debtor. By agreement, clerks may authorize collection agencies to retain all or any portion of the interest collected on these accounts. Collection may not be initiated with respect to a criminal offender who is under the supervision of the department of corrections without the prior agreement of the department.

Any contract with a collection agency shall be awarded only after competitive bidding. Factors that a court clerk shall consider in awarding a collection contract include but are not limited to: (1) A collection agency's history and reputation in the community; and (2) the agency's access to a local data base that may increase the efficiency of its collections.

The servicing of an unpaid court obligation does not constitute assignment of a debt, and no contract with a collection agency may remove the court's control over unpaid obligations owed to the court.

Passed the House April 19, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 292

[Substitute House Bill 1692]

COURT CLERKS' FEES

AN ACT Relating to the clarification of clerks' fees; amending RCW 5.28.010, 10.14.040, 10.82.070, 11.86.031, 12.40.105, 12.40.110, 13.64.020, 26.50.030, 34.05.514, 36.18.020, 36.18.010, 36.18.022, 40.14.027, 49.60.227, 65.12.780, 70.02.070, and 90.03.180; adding new sections to chapter 36.18 RCW; and repealing RCW 2.32.075.

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

Sec. 1. RCW 5.28.010 and 1987 c 202 s 124 are each amended to read as follows:

~~((That))~~ Every court, judge, clerk of a court, or notary public, is authorized to take testimony in any action, suit or proceeding, and such other persons in particular cases as authorized by law. Every such court or officer is authorized to collect fees established under RCW 36.18.020 and sections 12 through 15 of

this act and to administer oaths and affirmations generally((~~7~~)) and to every such other person in such particular case as authorized.

Sec. 2. RCW 10.14.040 and 1987 c 280 s 4 are each amended to read as follows:

There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) Filing fees are set in RCW 36.18.020, but no filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

Sec. 3. RCW 10.82.070 and 1988 c 169 s 5 are each amended to read as follows:

(1) All sums of money derived from costs, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued.

(2) The county treasurer shall remit monthly thirty-two percent of the money received under this section except for certain costs to the state treasurer for deposit as provided under RCW 43.08.250 and shall deposit the remainder as provided by law. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Costs or assessments awarded to dedicated accounts, state or local, are not subject to this state allocation or to RCW 7.68.035.

(3) 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. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed.

Sec. 4. RCW 11.86.031 and 1989 c 34 s 3 are each amended to read as follows:

(1) The disclaimer shall:

- (a) Be in writing;
- (b) Be signed by the disclaimant;
- (c) Identify the interest to be disclaimed; and
- (d) State the disclaimer and the extent thereof.

(2) The disclaimer shall be delivered or mailed as provided in subsection (3) of this section at any time after the creation of the interest, but in all events by nine months after the latest of:

- (a) The date the beneficiary attains the age of twenty-one years;
- (b) The date of the transfer; or
- (c) The date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested.

(3) The disclaimer shall be mailed by first-class mail, or otherwise delivered, to the creator of the interest, the creator's legal representative, or the holder of the legal title to the property to which the interest relates or, if the creator is dead and there is no legal representative or holder of legal title, to the person having possession of the property.

(4) If the date of the transfer is the date of the death of the creator of the interest, a copy of the disclaimer may be filed with the clerk of the probate court in which the estate of the creator is, or has been, administered, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of such person, where it shall be indexed under the name of the decedent in the probate index upon the payment of a fee (~~of two dollars~~) established under section 14 of this act.

(5) The disclaimer of an interest in real property may be recorded, but shall constitute notice to all persons only from and after the date of recording. If recorded, a copy of the disclaimer shall be recorded in the office of the auditor in the county or counties where the real property is situated.

Sec. 5. RCW 12.40.105 and 1983 c 254 s 2 are each amended to read as follows:

If the losing party fails to pay the judgment within twenty days or within the period otherwise ordered by the court, the judgment shall be increased by: (1) An amount sufficient to cover costs of certification of the judgment under RCW 12.40.110; and (2) the amount specified in (~~RCW 36.18.020(3)~~) section 12(2) of this act, without regard to the jurisdictional limits on the small claims department.

Sec. 6. RCW 12.40.110 and 1984 c 258 s 68 are each amended to read as follows:

(1) If the losing party fails to pay the judgment according to the terms and conditions thereof within twenty days or is in arrears on any payment plan, and the prevailing party so notifies the court, the judge before whom such hearing was had shall certify the judgment in substantially the following form:

Washington.

In the District Court of County.
. Plaintiff,
vs.
. Defendant.

In the Small Claims Department.

This is to certify that: (1) In a certain action before me, the undersigned, had on this the day of 19. . . , wherein was plaintiff and defendant, jurisdiction of said defendant having been had by personal service (or otherwise) as provided by law, I then and there entered judgment against in the sum of Dollars; (2) the judgment has not been paid within twenty days or the period otherwise ordered by the court; and (3) pursuant to RCW 12.40.105, the amount of the judgment is hereby increased by any costs of certification under this section and the amount specified in ((~~RCW 36.18.020(3)~~) section 12(2) of this act.

Witness my hand this day of, 19. . .

.
District Judge sitting in the
Small Claims Department.

(2) The judge shall forthwith enter the judgment transcript on the judgment docket of the district court; and thereafter garnishment, execution, and other process on execution provided by law may issue thereon, as in other judgments of district courts.

(3) Transcripts of such judgments may be filed and entered in judgment lien dockets in superior courts with like effect as in other cases.

Sec. 7. RCW 13.64.020 and 1993 c 294 s 2 are each amended to read as follows:

(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.))~~ Fees for this section are set under section 13 of this act.

**Sec. 8. RCW 26.50.030 and 1992 c 111 s 2 are each amended to read as follows:*

There shall exist an action known as a petition for an order for protection in cases of domestic violence.

(1) A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns petitioner and respondent in accordance with RCW 26.50.060~~((3))~~ (4).

(3) Within ninety days of receipt of the master copy from the administrator for the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) ~~((A))~~ No filing fee ~~((of twenty dollars shall))~~ may be charged for proceedings under this section. ~~((No filing fee may be charged for: (a) A petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought; or (b) the transfer of a case from district or municipal court to superior court under RCW 26.50.020(2).))~~ Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

**Sec. 8 was vetoed. See message at end of chapter.*

Sec. 9. RCW 34.05.514 and 1994 c 257 s 23 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section ~~((and RCW 36.70A.300(3)))~~, proceedings for review under this chapter shall be instituted by paying the fee required under RCW 36.18.020 and filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located.

(2) For proceedings involving institutions of higher education, the petition shall be filed either in the county in which the principal office of the institution

involved is located or in the county of a branch campus if the action involves such branch.

Sec. 10. RCW 36.18.020 and 1993 c 435 s 1 are each amended to read as follows:

(1) Revenue collected under this section is subject to division with the state public safety and education account under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070.

(2) Clerks of superior courts shall collect the following fees for their official services:

~~((1))~~ (a) The party filing the first or initial paper in any civil action, including, but not limited to an action for restitution, ~~((or))~~ adoption, or change of name, shall pay, at the time ~~((said))~~ the 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))~~ for which the plaintiff shall pay a case initiating 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))~~ (b) 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 eriminal, 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 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 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)) (c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of one hundred ten dollars.~~

~~(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of one hundred ten dollars.~~

~~(e) For filing of a petition for determination of water rights under RCW 90.03.180 a filing fee of twenty-five dollars.~~

~~(f) 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 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)) (g) 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 the clerk may collect an execution fee as authorized by the federal government.~~

~~(16) For 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.~~

~~(18)) (h) 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.~~

~~((19))~~ (i) 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.

~~((20))~~ (3) 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.

**Sec. 11. RCW 36.18.010 and 1991 c 26 s 2 are each amended to read as follows:*

County auditors or recording officers shall collect the following fees for their official services:

For recording instruments, for the first page, legal size (eight and one-half by fourteen inches or less), five dollars; for each additional legal size page, one dollar; the fee for recording multiple transactions contained in one instrument will be calculated individually for each transaction requiring separate indexing as required under RCW 65.04.050;

For preparing and certifying copies, for the first legal size page, three dollars; for each additional legal size page, one dollar;

For preparing noncertified copies, for each legal size page, one dollar;

For administering an oath or taking an affidavit, with or without seal, two dollars;

For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five-dollar fee for use and support of the prevention of child abuse and neglect activities to be transmitted monthly to the state treasurer and deposited in the state general fund, (~~which five-dollar fee shall expire June 30, 1995,~~) plus an additional ten-dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

For searching records per hour, eight dollars;

For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

For recording of miscellaneous records, not listed above, for first legal size page, five dollars; for each additional legal size page, one dollar;

For modernization and improvement of the recording and indexing system, a surcharge as provided in RCW 36.22.170.

**Sec. 11 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 12. A new section is added to chapter 36.18 RCW to read as follows:

(1) Revenue collected under this section is subject to division with the state for deposit in the public safety and education account under RCW 36.18.025.

(2) 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.

(3) For the filing of a tax warrant by the department of revenue of the state of Washington, a fee of five dollars must be paid.

(4) The clerk shall collect a fee of twenty dollars for: Filing a paper not related to or a part of a proceeding, civil or criminal, or a probate matter, required or permitted to be filed in the clerk's office for which no other charge is provided by law; or filing a petition, written agreement, or memorandum as provided in RCW 11.96.170.

(5) 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 before proceeding with the unlawful detainer action eighty dollars.

(6) For a restrictive covenant for filing a petition to strike discriminatory provisions in real estate under RCW 49.60.227 a fee of twenty dollars must be charged.

(7) A fee of twenty dollars must be charged for filing a will only, when no probate of the will is contemplated.

(8) A fee of two dollars must be charged for filing a petition, written agreement, or written memorandum in a nonjudicial probate dispute under RCW 11.96.170.

(9) For certification of delinquent taxes by a county treasurer under RCW 84.64.190, a fee of five dollars must be charged.

NEW SECTION. Sec. 13. A new section is added to chapter 36.18 RCW to read as follows:

(1) Revenue collected under this section is subject to division with the county law library under RCW 27.24.070.

(2) For filing a petition for emancipation for minors as required under RCW 13.64.020 a fee up to fifty dollars must be collected.

NEW SECTION. Sec. 14. A new section is added to chapter 36.18 RCW to read as follows:

(1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, a fee of twenty dollars must be paid.

(3) The party making a demand for jury of six in a civil action shall pay, at the time, a fee of fifty dollars; if the demand is for a jury of twelve, a fee of

one hundred dollars. If, after the party demands 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. Upon conviction in criminal cases a jury demand charge may be imposed as costs under RCW 10.46.190.

(4) For preparing, transcribing, or certifying an instrument on file or of record in the clerk's office, with or without seal, for the first page or portion of the first page, a fee of two dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of one dollar for each additional seal affixed must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(8) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of two dollars.

(9) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(10) For clerk's 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.

(11) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape.

(12) For the filing of oaths and affirmations under chapter 5.28 RCW, a fee of twenty dollars must be charged.

(13) For filing a disclaimer of interest under RCW 11.86.031(4), a fee of two dollars must be charged.

(14) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of five dollars must be charged.

(15) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of one hundred ten dollars must be charged.

(16) A facilitator surcharge of ten dollars must be charged as authorized under RCW 26.12.240.

(17) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(18) A service fee of three dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(19) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(20) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(21) Investment service charge and earnings under RCW 36.48.090 must be charged.

(22) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

NEW SECTION. Sec. 15. A new section is added to chapter 36.18 RCW to read as follows:

(1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The office of the state administrator for the courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the administrator for the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged.

Sec. 16. RCW 36.18.022 and 1992 c 54 s 5 are each amended to read as follows:

The court may waive the filing fees provided for under RCW 36.18.020 ~~((1) and)~~ (2) (a) and (b) upon affidavit by a party that the party is unable to pay the fee due to financial hardship.

Sec. 17. RCW 40.14.027 and 1994 c 193 s 2 are each amended to read as follows:

State agencies shall collect a surcharge of twenty dollars from the judgment debtor upon the satisfaction of a warrant filed in superior court for unpaid taxes or liabilities. The surcharge is imposed on the judgment debtor in the form of a penalty in addition to the filing fee provided in ~~((RCW 36.18.020(4)))~~ section 12(3) of this act. The surcharge revenue shall be transmitted to the state treasurer for deposit in the archives and records management account, or procedures for the collection and transmittal of surcharge revenue to the archives and records management account shall be established cooperatively between the filing agencies and clerks of superior court.

Surcharge revenue deposited in the archives and records management account shall be expended by the secretary of state exclusively for the payment of costs and expenses incurred in the provision of public archives and records management services to local government agencies by the division of archives and records management. The secretary of state shall work with local government representatives to establish a committee to advise the state archivist on the local government archives and records management program. Surcharge revenue shall be allocated exclusively to:

(1) Appraise, process, store, preserve, and provide public research access to original records designated by the state archivist as archival which are no longer required to be kept by the agencies which originally made or filed them;

(2) Protect essential records, as provided by chapters 40.10 and 40.20 RCW. Permanent facsimiles of essential records shall be produced and placed in security storage with the state archivist;

(3) Coordinate records retention and disposition management and provide support for the following functions under RCW 40.14.070:

(a) Advise and assist individual agencies on public records management requirements and practices; and

(b) Compile, maintain, and regularly update general records retention schedules and destruction authorizations; and

(4) Develop and maintain standards for the application of recording media and records storage technologies.

Sec. 18. RCW 49.60.227 and 1993 c 69 s 10 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. The person bringing the action shall pay a fee set under section 12 of this act.

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. 19. RCW 65.12.780 and 1907 c 250 s 94 are each amended to read as follows:

On the filing of any application for registration, the applicant shall pay to the clerk of the court (~~(, in counties having more than forty thousand population, the sum of three dollars; and in all other counties, the sum of five dollars, which shall be in full of all clerk's fees and charges in such proceeding in behalf of the applicant. Any defendant, on entering his appearance, shall pay to the clerk of the court, the sum of three dollars, which shall be in full of all clerk's fees in behalf of such defendant)~~) filing fees as set in section 14 of this act. When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this chapter shall be paid for by the party on whose application the order of publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of court, or the registrar of titles.

Sec. 20. RCW 70.02.070 and 1991 c 335 s 206 are each amended to read as follows:

Upon the request of the person requesting the record, the health care provider or facility shall certify the record furnished and may charge for such certification in accordance with ~~((RCW 36.18.020(9)))~~ section 14(5) of this act. No record need be certified until the fee is paid. The certification shall be affixed to the record and disclose:

- (1) The identity of the patient;
- (2) The kind of health care information involved;
- (3) The identity of the person to whom the information is being furnished;
- (4) The identity of the health care provider or facility furnishing the information;
- (5) The number of pages of the health care information;
- (6) The date on which the health care information is furnished; and
- (7) That the certification is to fulfill and meet the requirements of this section.

Sec. 21. RCW 90.03.180 and 1982 c 15 s 2 are each amended to read as follows:

At the time of filing the statement as provided in RCW 90.03.140, each defendant shall pay to the clerk of the superior court a fee ~~((of twenty-five dollars))~~ as set under RCW 36.18.020.

NEW SECTION. **Sec. 22.** RCW 2.32.075 and 1961 c 304 s 5 are each repealed.

Passed the House April 19, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor May 9, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 9, 1995.

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

"I am returning herewith, without my approval as to sections 8 and 11, Substitute House Bill No. 1692 entitled:

"AN ACT Relating to the clarification of clerks' fees;"

This bill clarifies and restructures statutes for the collection and distribution of court fees. However, this legislation contains language already signed into law in Engrossed Substitute Senate Bill No. 5219 which makes substantial revisions to statutes regarding domestic violence.

Section 8 of this bill eliminates the filing fee for orders for protection in cases of domestic violence. Section 3 of Engrossed Substitute Senate Bill No. 5219 made this change and contained additional desirable language regarding disclosure of other custody related litigation. Section 11 removes the expiration date for the five dollar fee on marriage licenses earmarked for child abuse and neglect prevention activities. Section 37 of Engrossed Substitute Senate Bill No. 5219 made this change and additionally included immediate implementation, enabling this fee to continue without unnecessary suspension.

For these reasons, I have vetoed sections 8 and 11 of Substitute House Bill No. 1692.

With the exception of sections 8 and 11, Substitute House Bill No. 1692 is approved."

CHAPTER 293

[House Bill 1725]

HOUSING AUTHORITIES—REVISIONS

AN ACT Relating to housing authorities; and amending RCW 35.82.040 and 35.82.130.

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

Sec. 1. RCW 35.82.040 and 1965 c 7 s 35.82.040 are each amended to read as follows:

When the governing body of a city adopts a resolution ~~((as aforesaid))~~ declaring that there is a need for a housing authority, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for ~~((said))~~ the city. When the governing body of a county adopts a resolution ~~((as aforesaid, said body))~~ declaring that there is a need for a housing authority, it shall appoint five persons as commissioners of the authority created for ~~((said))~~ the county. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed ~~((as aforesaid))~~ for a term of office of five years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created, unless the commissioner is an employee of a separately elected county official other than the county governing body in a county with a population of less than one hundred seventy-five thousand as of the 1990 federal census, and the total government employment in that county exceeds forty percent of total employment. A commissioner shall hold office until ~~((his))~~ a successor has been appointed and has qualified, unless sooner removed according to this chapter. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his or her services for the authority, in any capacity, but he or she shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

The powers of each authority shall be vested in the commissioners thereof in office from time to time. Three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The mayor (or in the case of an authority for a county, the governing body of the county) shall designate which of the commissioners appointed shall be the first ~~((chairman))~~ chair of the

commission and he or she shall serve in the capacity of ~~((chairman))~~ chair until the expiration of his or her term of office as commissioner. When the office of the ~~((chairman))~~ chair of the authority ~~((thereafter))~~ becomes vacant, the authority shall select a ~~((chairman))~~ chair from among its commissioners. An authority shall select from among its commissioners a vice ~~((chairman))~~ chair, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or the county or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

Sec. 2. RCW 35.82.130 and 1991 c 167 s 2 are each amended to read as follows:

An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable: (1) Exclusively from the income and revenues of the housing project financed with the proceeds of such bonds; (2) exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds; or (3) from all or part of its revenues or assets generally. Any such bonds may be additionally secured by a pledge of any grant or contributions from the federal government or other source, or a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority. Any pledge made by the authority shall be valid and binding from the time when the pledge is made ~~((and recorded))~~; the revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective or whether the parties have notice thereof. ~~((The resolution and any other instrument by which a pledge is created shall be filed or recorded.))~~

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state on their face) shall not be a debt of the city, the county, the state or any political subdivision thereof and neither the city or the county, nor the state or any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of ~~((said))~~ the authority. The bonds shall not constitute an indebted-

ness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. Nothing in this section shall prevent an authority from issuing bonds the interest on which is included in gross income of the owners thereof for income tax purposes.

Passed the House March 8, 1995.
Passed the Senate April 22, 1995.
Approved by the Governor May 9, 1995.
Filed in Office of Secretary of State May 9, 1995.

CHAPTER 294

[Engrossed House Bill 1770]

PLUMBING CERTIFICATE OF COMPETENCE ENFORCEMENT

AN ACT Relating to enforcement of requirements for plumbing certificates of competency; and amending RCW 18.106.280.

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

Sec. 1. RCW 18.106.280 and 1994 c 174 s 1 are each amended to read as follows:

The department of labor and industries (~~shall~~) may establish one pilot project in which the department will enter into an agreement with a city and the county within which the city is located regarding compliance inspections by the city or county to enforce this chapter. Under the terms of the agreement, the city and county shall be permitted to submit declarations of noncompliance to the department for the department's enforcement under RCW 18.106.180, with reimbursement to the city or county at an established fee. The pilot project shall be located in eastern Washington.

Passed the House March 13, 1995.
Passed the Senate April 22, 1995.
Approved by the Governor May 9, 1995.
Filed in Office of Secretary of State May 9, 1995.

CHAPTER 295

[Substitute House Bill 1809]

NATUROPATHS—AUTHORITY TO GIVE DIRECTIONS TO NURSES

AN ACT Relating to naturopath's authority to give direction to persons licensed under chapter 18.79 RCW; amending RCW 18.79.260 and 18.79.270; creating a new section; and providing an effective date.

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

Sec. 1. RCW 18.79.260 and 1994 sp.s. c 9 s 426 are each amended to read as follows:

A registered nurse under his or her license may perform for compensation nursing care, as that term is usually understood, of the ill, injured, or infirm, and in the course thereof, she or he may do the following things that shall not be done by a person not so licensed, except as provided in RCW 18.79.270:

(1) At or under the general direction of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, naturopathic physician, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner acting within the scope of his or her license, administer medications, treatments, tests, and inoculations, whether or not the severing or penetrating of tissues is involved and whether or not a degree of independent judgment and skill is required. Such direction must be for acts which are within the scope of registered nursing practice;

(2) Delegate to other persons engaged in nursing, the functions outlined in subsection (1) of this section;

(3) Instruct nurses in technical subjects pertaining to nursing;

(4) Hold herself or himself out to the public or designate herself or himself as a registered nurse.

Sec. 2. RCW 18.79.270 and 1994 sp.s. c 9 s 427 are each amended to read as follows:

A licensed practical nurse under his or her license may perform nursing care, as that term is usually understood, of the ill, injured, or infirm, and in the course thereof may, under the direction of a licensed physician and surgeon, osteopathic physician and surgeon, dentist, naturopathic physician, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, advanced registered nurse practitioner acting under the scope of his or her license, or at the direction and under the supervision of a registered nurse, administer drugs, medications, treatments, tests, injections, and inoculations, whether or not the piercing of tissues is involved and whether or not a degree of independent judgment and skill is required, when selected to do so by one of the licensed practitioners designated in this section, or by a registered nurse who need not be physically present; if the order given is reduced to writing within a reasonable time and made a part of the patient's record. Such direction must be for acts within the scope of licensed practical nurse practice.

NEW SECTION. **Sec. 3.** By July 31, 1996, the Washington state nursing care quality assurance commission shall develop rules for nursing practice under the direction of naturopathic physicians.

NEW SECTION. **Sec. 4.** This act shall take effect August 1, 1996.

Passed the House April 20, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 296

[Engrossed Substitute House Bill 1821]

UNEMPLOYMENT COMPENSATION FOR PERSONS WITH PUBLIC
EMPLOYMENT CONTRACTS

AN ACT Relating to unemployment compensation for persons with public employment contracts; amending RCW 50.04.320, 50.44.050, and 50.44.053; creating new sections; and declaring an emergency.

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

Sec. 1. RCW 50.04.320 and 1986 c 21 s 1 are each amended to read as follows:

(1) For the purpose of payment of contributions, "wages" means the remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state in the amount specified in RCW 50.24.010. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in the individual's trade or business an individual who immediately before the acquisition was employed in the trade or business of the predecessor employer, then, for the purposes of determining the amount of remuneration paid by the successor employer to the individual during the calendar year which is subject to contributions, any remuneration paid to the individual by the predecessor employer during that calendar year and before the acquisition shall be considered as having been paid by the successor employer.

(2) For the purpose of payment of benefits, "wages" means the remuneration paid by one or more employers to an individual for employment under this title during his base year: PROVIDED, That at the request of a claimant, wages may be calculated on the basis of remuneration payable. The department shall notify each claimant that wages are calculated on the basis of remuneration paid, but at the claimant's request a redetermination may be performed and based on remuneration payable.

(3) For the purpose of payment of benefits and payment of contributions, the term "wages" includes tips which are received after January 1, 1987, while performing services which constitute employment, and which are reported to the employer for federal income tax purposes.

(4)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner. Remuneration does not include payments to members of a reserve component of the armed forces of the United States, including the organized militia of the

state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, shall be considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an employment contract with a public agency prior to its expiration date shall be considered remuneration. The proceeds shall be deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Except as provided in (c) of this subsection, the provisions of this ((section)) subsection (4) pertaining to the assignment of previously accrued compensation shall not apply to individuals subject to RCW 50.44.050.

Sec. 2. RCW 50.44.050 and 1990 c 33 s 587 are each amended to read as follows:

Except as otherwise provided in subsections (1) through (4) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on service in an instructional, research or principal administrative capacity for an educational institution shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year (or, when an agreement provides instead for a similar period between two regular but not successive terms within an academic year, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.405.210 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on services in any other capacity for an educational institution for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: PROVIDED, That if benefits are denied to any individual under this subsection and that individual was not offered an

opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in an educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.310 RCW and exists to provide services to local school districts.

(5) As used in subsection (1) of this section, "academic year" means, with respect to services described in subsection (1) of this section performed by part-time faculty at community colleges and technical colleges: Fall, winter, spring, and summer quarters or comparable semesters unless, based upon objective criteria including enrollment and staffing, the quarter or comparable semester is not in fact a part of the academic year for the particular institution.

Sec. 3. RCW 50.44.053 and 1985 ex.s. c 5 s 9 are each amended to read as follows:

The term "reasonable assurance," as used in RCW 50.44.050, means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. However, with respect to services described in RCW 50.44.050(1) performed by part-time faculty for community colleges and technical colleges, the term "reasonable assurance" does not include an agreement that is contingent on enrollment, funding, or program changes. A person shall not be deemed to be performing services "in the same capacity" unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term.

NEW SECTION. Sec. 4. The legislature finds that, as a general rule with limited exceptions, employees of educational institutions expect to be employed for no more than a nine or ten-month school year with a break between school years for the traditional summer vacation.

Because of the decision in *Evans v. Employment Security Department*, 72 Wn. App. 862 (1994), the legislature finds it necessary to clarify legislative intent with regard to unemployment compensation for employees of educational

institutions. The 1995 c . . . s 2 (section 2 of this act) amendment to RCW 50.44.050 is intended to clarify that for the part-time faculty at two-year institutions of higher education, summer quarter may be expected to be a time of employment, unless otherwise shown. However, the 1995 c . . . s 2 (section 2 of this act) amendment to RCW 50.44.050 is not intended to change the general rules used by the employment security department prior to the *Evans* decision regarding unemployment compensation for other employees of educational institutions.

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. 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. 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 April 22, 1995.

Passed the Senate April 22, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 297

[Substitute House Bill 1865]

GUARDIANSHIP—REVISED PROVISIONS

AN ACT Relating to guardianship; and amending RCW 11.88.030, 11.88.040, 11.88.045, 11.88.090, 11.88.095, 11.92.050, 11.92.053, 11.92.180, and 11.94.010.

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

Sec. 1. RCW 11.88.030 and 1991 c 289 s 2 are each amended to read as follows:

(1) Any person or entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as now or hereafter amended as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both, and why no alternative to guardianship is appropriate;

(i) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(j) The requested term of the limited guardianship to be included in the court's order of appointment;

(k) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(3) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

**IMPORTANT NOTICE
PLEASE READ CAREFULLY**

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE COUNTY SUPERIOR COURT BY IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- (1) TO MARRY OR DIVORCE;**
- (2) TO VOTE OR HOLD AN ELECTED OFFICE;**
- (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;**
- (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;**
- (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;**
- (6) TO POSSESS A LICENSE TO DRIVE;**
- (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;**
- (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;**
- (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;**
- (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.**

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

(5) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

Sec. 2. RCW 11.88.040 and 1991 c 289 s 3 are each amended to read as follows:

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally ~~((to))~~ upon the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incapacitated person, or minor, if under fourteen years of age;

(2) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse of the alleged incapacitated person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incapacitated person shall be present in court at the final hearing on the petition: **PROVIDED**, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

Sec. 3. RCW 11.88.045 and 1991 c 289 s 4 are each amended to read as follows:

(1)(a) Alleged incapacitated individuals shall have the right to be represented by counsel at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged incapacitated person is further entitled upon request to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter 18.71 or 18.57 RCW or licensed or certified psychologist selected by the guardian ad litem. The physician or psychologist shall have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in

the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

- (a) The name and address of the examining physician or psychologist;
- (b) The education and experience of the physician or psychologist pertinent to the case;
- (c) The dates of examinations of the alleged incapacitated person;
- (d) A summary of the relevant medical, functional, neurological, psychological, or psychiatric history of the alleged incapacitated person as known to the examining physician or psychologist;
- (e) The findings of the examining physician or psychologist as to the condition of the alleged incapacitated person;
- (f) Current medications;
- (g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;
- (h) Opinions on the specific assistance the alleged incapacitated person needs;
- (i) Identification of persons with whom the physician or psychologist has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or psychological report meeting the above requirements is filed.

The requirement of filing a medical report is waived if the basis of the guardianship is minority.

Sec. 4. RCW 11.88.090 and 1991 c 289 s 5 are each amended to read as follows:

(1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180, as now or hereafter amended, shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

(2) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person, who shall be a person found or known by the court to

- (a) be free of influence from anyone interested in the result of the proceeding;
- (b) have the requisite knowledge, training, or expertise to perform the duties required by this section.

No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (5) of this section. The appointment of a guardian ad litem

shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.

(3)(a) The superior court of each county shall develop by September 1, 1991, a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardians ad litem only persons whose names appear on the registry, except in extraordinary circumstances.

(b) To be eligible for the registry a person shall:

(i) Present a written statement of qualifications describing the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapters 11.88 and 11.92 RCW; and

(ii) Complete a training program adopted by the court, or, in the absence of a locally adopted program, a candidate for inclusion upon the registry shall have completed a model training program as described in (d) of this subsection.

(c) The superior court of each county shall approve training programs designed to:

(i) Train otherwise qualified human service professionals in those aspects of legal procedure and the requirements of chapters 11.88 and 11.92 RCW with which a guardian ad litem should be familiar;

(ii) Train otherwise qualified legal professionals in those aspects of medicine, social welfare, and social service delivery systems with which a guardian ad litem should be familiar.

(d) The superior court of each county may approve a guardian ad litem training program on or before June 1, 1991. The department of social and health services, aging and adult services administration, shall convene an advisory group to develop a model guardian ad litem training program. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, aging, legal, court administration, and other interested parties.

(e) Any superior court that has not adopted a guardian ad litem training program by September 1, 1991, shall require utilization of a model program developed by the advisory group as described in (d) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(4) The guardian ad litem's written statement of qualifications required by RCW 11.88.090(3)(b)(i) shall be made part of the record in each matter in which the person is appointed guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

(iv) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(v) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vi) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(vii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(viii) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the bearing on the petition.

Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least ten days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her spouse, all children not residing with a notified person, those persons described in ~~((d))~~ (e)(vii) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150;

(f) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to RCW 11.88.090(5)(e) as now or hereafter amended.

(7) The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incapacitated person.

(8) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That if no guardian or limited guardian is appointed the court may charge such fee to the petitioner or the alleged incapacitated person, or divide the fee, as it deems just; and if the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be

required to provide for the payment of a fee to any salaried employee of a public agency.

(9) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

Sec. 5. RCW 11.88.095 and 1991 c 289 s 6 are each amended to read as follows:

(1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) When the next report of the guardian is due;

(d) Whether the guardian ad litem shall continue acting as guardian ad litem;

(e) Whether a review hearing shall be required upon the filing of the inventory;

(f) The authority of the guardian, if any, for investment and expenditure of the ward's estate; and

(g) Names and addresses of those persons described in RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship.

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the continued validity of that medical power of attorney before appointing a guardian or limited guardian for the person.

Sec. 6. RCW 11.92.050 and 1990 c 122 s 23 are each amended to read as follows:

(1) Upon the filing of any intermediate guardianship or limited guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian or limited guardian may petition the court for an order settling his or her account with regard to any ~~((and all))~~ receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of ~~((said))~~ the interim report. Upon such petition being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of ~~((such))~~ the petition and require the service of the petition and a notice of ~~((such))~~ the hearing as provided in RCW 11.88.040 as now or hereafter amended; and, in the event ~~((such))~~ a hearing ~~((be))~~ is ordered, the court ~~((shall))~~ may also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian or limited guardian of the estate and to advise the court thereon at ~~((said))~~ the hearing, in writing. At ~~((such))~~ the hearing on ~~((said))~~ the report of the guardian or limited guardian, if the court ~~((be))~~ is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his or her trust with relation to ~~((such))~~ the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account~~((, and such))~~. If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after ~~((said))~~ the incapacitated person attains his or her majority any such interim account may be challenged by ~~((said))~~ the incapacitated person on the ground of fraud.

(2) The procedure established in subsection (1) of this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043.

Sec. 7. RCW 11.92.053 and 1990 c 122 s 24 are each amended to read as follows:

Within ninety days after the termination of a guardianship for any reason ~~((other than the death of the incapacitated person intestate))~~, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account as filed in accordance with RCW 11.92.040(2) with regard to any ~~((and all))~~ receipts, expenditures, and investments made and acts done by the guardian to the date of ~~((said))~~ the termination. Upon ~~((such))~~ the filing of the petition ~~((being filed))~~, the court shall set a date for the hearing of ~~((such))~~ the petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to ~~((such))~~ the petition or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the

transactions of the guardian be approved, and the court may appoint a guardian ad litem to review the report.

At ~~((such))~~ the hearing on ~~((said))~~ the petition of the guardian or limited guardian, if the court ~~((be))~~ is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to ~~((such))~~ the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving ~~((such))~~ the account, and ~~((such))~~ the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order ~~((PROVIDED, That)).~~ However, within one year after ~~((said))~~ the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud.

Sec. 8. RCW 11.92.180 and 1994 c 68 s 1 are each amended to read as follows:

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. Where the incapacitated person is a department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of residential or supportive services then the department shall be entitled to notice of proceedings as described in RCW 11.92.150. The amount of guardianship fees and additional compensation for administrative costs shall not exceed the amount allowed by the department of social and health services by rule ~~((and shall not include compensation for services provided or funded by the department or a department contractor that the incapacitated person is eligible to receive)).~~

Sec. 9. RCW 11.94.010 and 1989 c 211 s 1 are each amended to read as follows:

(1) Whenever a principal designates another as his or her attorney in fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. Unless he or she is the spouse, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility where the principal resides or receives care. This authorization is subject to the same limitations as those that apply to a guardian under RCW ~~((11.92.040(3) (a) through (d)))~~ 11.92.043(5) (a) through (c).

Passed the House April 20, 1995.

Passed the Senate April 14, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 298

[Substitute House Bill 1871]

TAX EQUALIZATION—TRANSIT SYSTEMS IMPOSING A UTILITY TAX

AN ACT Relating to tax equalization for transit systems imposing a utility tax; amending RCW 82.14.046; and creating a new section.

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

Sec. 1. RCW 82.14.046 and 1994 c 241 s 2 are each amended to read as follows:

Beginning with distributions made to municipalities under RCW 82.44.150 on January 1, 1996, municipalities as defined in RCW 35.58.272 imposing local transit taxes, which for purposes of this section include the sales and use tax under RCW 82.14.045, the business and occupation tax under RCW 35.95.040, and excise taxes under RCW 35.95.040, shall be eligible for sales and use tax equalization payments from motor vehicle excise taxes distributed under RCW 82.44.150 as follows:

(1) Prior to January 1st of each year the department of revenue shall determine the total and the per capita levels of revenues for each municipality imposing ~~((the sales and use tax authorized under RCW 82.14.045))~~ local transit taxes and the state-wide weighted average per capita level of sales and use tax revenues imposed under chapters 82.08 and 82.12 RCW for the previous calendar year calculated for a sales and use tax rate of one-tenth percent. For purposes of this section, the department of revenue shall determine a local transit tax rate for each municipality for the previous calendar year. The tax rate shall be equivalent to the sales and use tax rate for the municipality that would have generated an amount of revenue equal to the amount of local transit taxes collected by the municipality.

(2) For each tenth of one percent of ~~((sales and use tax imposed under RCW 82.14.045))~~ the local transit tax rate, the state treasurer shall apportion to each municipality receiving less than eighty percent of the state-wide weighted average per capita level of sales and use tax revenues imposed under chapters 82.08 and 82.12 RCW as determined by the department of revenue under subsection (1) of this section, an amount when added to the per capita level of revenues received the previous calendar year by the municipality, to equal eighty percent of the state-wide weighted average per capita level of revenues determined under subsection (1) of this section. In no event may the sales and use tax equalization distribution to a municipality in a single calendar year exceed: (a) Fifty percent of the amount of ~~((sales and use tax))~~ local transit taxes collected ~~((under RCW 82.14.045))~~ during the prior calendar year; or (b) the maximum amount of revenue that could have been collected at a local transit tax rate of three-tenths percent in the prior calendar year.

(3) For a municipality established after January 1, 1995, sales and use tax equalization distributions shall be made according to the procedures in this subsection. Sales and use tax equalization distributions to eligible new municipalities shall be made at the same time as distributions are made under

subsection (2) of this section. The department of revenue shall follow the estimating procedures outlined in this subsection until the new municipality has received a full year's worth of local transit tax revenues (~~(under RCW 82.14.045)~~) as of the January sales and use tax equalization distribution.

(a) Whether a newly established municipality determined to receive funds under this subsection receives its first equalization payment at the January, April, July, or October sales and use tax equalization distribution shall depend on the date the system first imposes (~~(the tax authorized under RCW 82.14.045)~~) local transit taxes.

(i) A newly established municipality imposing (~~(the tax authorized under RCW 82.14.045)~~) local transit taxes taking effect during the first calendar quarter shall be eligible to receive funds under this subsection beginning with the July sales and use tax equalization distribution of that year.

(ii) A newly established municipality imposing (~~(the tax authorized under RCW 82.14.045)~~) local transit taxes taking effect during the second calendar quarter shall be eligible to receive funds under this subsection beginning with the October sales and use tax equalization distribution of that year.

(iii) A newly established municipality imposing (~~(the tax authorized under RCW 82.14.045)~~) local transit taxes taking effect during the third calendar quarter shall be eligible to receive funds under this subsection beginning with the January sales and use tax equalization distribution of the next year.

(iv) A newly established municipality imposing (~~(the tax authorized under RCW 82.14.045)~~) local transit taxes taking effect during the fourth calendar quarter shall be eligible to receive funds under this subsection beginning with the April sales and use tax equalization distribution of the next year.

(b) For purposes of calculating the amount of funds the new municipality should receive under this subsection, the department of revenue shall:

(i) Estimate the per capita amount of revenues from (~~(the tax authorized under RCW 82.14.045)~~) local transit taxes that the new municipality would have received had the municipality received revenues from the tax the entire calendar year;

(ii) Calculate the amount provided under subsection (2) of this section based on the per capita revenues determined under (b)(i) of this subsection;

(iii) Prorate the amount determined under (b)(ii) of this subsection by the number of months the (~~(tax authorized under RCW 82.14.045 is)~~) local transit taxes have been imposed.

(c) The department of revenue shall advise the state treasurer of the amounts calculated under (b) of this subsection and the state treasurer shall distribute these amounts to the new municipality from the motor vehicle excise tax distributed under RCW 82.44.150(2)(d).

~~((d) Revenues estimated under this subsection shall not affect the calculation of the state wide weighted average per capita level of revenues for all municipalities made under subsection (1) of this section.)~~

~~(4) ((For an existing municipality imposing the sales and use tax authorized under RCW 82.14.045 to take effect after January 1, 1995, sales and use tax equalization payments shall be made according to the procedures for newly established municipalities in subsection (3) of the section.~~

~~(5)) A municipality whose governing body implements a tax change that reduces its ((sales and use tax rate under RCW 82.14.045)) local transit tax rate after January 1, 1994, may not receive distributions under this section.~~

NEW SECTION. Sec. 2. If specific funding for the purpose of this act, referring to this act by bill number, is not provided for in a transportation appropriations act in 1995 that either becomes law under Article III, section 12 of the state Constitution or is approved by the people of the state, this act is null and void.

Passed the House April 19, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 299

[House Bill 1872]

BOARD OF PHYSICAL THERAPY--POWERS REGARDING SUPPORT PERSONNEL

AN ACT Relating to the authority of the board of physical therapy over supportive personnel; and reenacting and amending RCW 18.74.023.

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

Sec. 1. RCW 18.74.023 and 1991 c 12 s 3 and 1991 c 3 s 175 are each reenacted and amended to read as follows:

The board has the following powers and duties:

(1) To administer examinations to applicants for a license under this chapter.
 (2) To pass upon the qualifications of applicants for a license and to certify to the secretary duly qualified applicants.

(3) To make such rules not inconsistent with the laws of this state as may be deemed necessary or proper to carry out the purposes of this chapter.

(4) To establish and administer requirements for continuing competency, which shall be a prerequisite to renewing a license under this chapter.

(5) To keep an official record of all its proceedings, which record shall be evidence of all proceedings of the board which are set forth therein.

(6) To adopt rules not inconsistent with the laws of this state, when it deems appropriate, in response to questions put to it by professional health associations, physical therapists, and consumers in this state concerning the authority of physical therapists to perform particular acts.

(7) To adopt rules to define and specify the education and training requirements for physical therapist assistants and physical therapy aides.

Passed the House April 20, 1995.
Passed the Senate April 12, 1995.
Approved by the Governor May 9, 1995.
Filed in Office of Secretary of State May 9, 1995.

CHAPTER 300

[House Bill 1879]

JUVENILE OFFENDERS—COSTS OF TREATMENT AND CONFINEMENT

AN ACT Relating to costs of juvenile offenders; and amending RCW 13.40.220; and declaring an emergency.

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

Sec. 1. RCW 13.40.220 and 1994 sp.s. c 7 s 529 are each amended to read as follows:

(1) Whenever legal custody of a child is vested in someone other than his or her parents, under this chapter, and not vested in the department of social and health services, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum representing in whole or in part the costs of support, treatment, and confinement of the child after the decree is entered.

(2) If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against such person for contempt.

(3) Whenever legal custody of a child is vested in the department under this chapter, the parents or other persons legally obligated to care for and support the child shall be liable for the costs of support, treatment, and confinement of the child, in accordance with the department's reimbursement of cost schedule. The department shall adopt a reimbursement of cost schedule based on the costs of providing such services, and shall determine an obligation based on the responsible parents' or other legally obligated person's ability to pay. The department is authorized to adopt additional rules as appropriate to enforce this section.

(4) To enforce subsection (3) of this section, the department shall serve on the parents or other person legally obligated to care for and support the child a notice and finding of financial responsibility requiring the parents or other legally obligated person to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect and should not be ordered. This notice and finding shall relate to the costs of support, treatment, and confinement of the child in accordance with the department's reimbursement of cost schedule adopted under this section, including periodic payments to be made in the future. The hearing shall be held pursuant to chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department.

(5) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the parent or legally obligated person by certified mail, return receipt requested. The receipt shall be prima facie evidence of service.

(6) If the parents or other legally obligated person objects to the notice and finding of financial responsibility, then an application for an adjudicative hearing may be filed within twenty days of the date of service of the notice. If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the parents or other legally obligated person and shall also determine the amount of periodic payments to be made in the future. If the parents or other legally responsible person fails to file an application within twenty days, the notice and finding of financial responsibility shall become a final administrative order.

(7) Debts determined pursuant to this section are subject to collection action without further necessity of action by a presiding or reviewing officer. The department may collect the debt in accordance with RCW 43.20B.635, 43.20B.640, 74.20A.060, and 74.20A.070. The department shall exempt from payment parents receiving adoption support under RCW 74.13.100 through 74.13.145, ~~((and))~~ parents eligible to receive adoption support under RCW 74.13.150, and a parent or other legally obligated person when the parent or other legally obligated person, or such person's child, spouse, or spouse's child, was the victim of the offense for which the child was committed.

(8) An administrative order entered pursuant to this section shall supersede any court order entered prior to June 13, 1994.

(9) The department shall be subrogated to the right of the child and his or her parents or other legally responsible person to receive support payments for the benefit of the child from any parent or legally obligated person pursuant to a support order established by a superior court or pursuant to RCW 74.20A.055. The department's right of subrogation under this section is limited to the liability established in accordance with its cost schedule for support, treatment, and confinement, except as addressed in subsection (10) of this section.

(10) Nothing in this section precludes the department from recouping such additional support payments from the child's parents or other legally obligated person as required to qualify for receipt of federal funds. The department may adopt such rules dealing with liability for recoupment of support, treatment, or confinement costs as may become necessary to entitle the state to participate in federal funds unless such rules would be expressly prohibited by law. If any law dealing with liability for recoupment of support, treatment, or confinement costs is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds, such conflicting law is declared to be inoperative solely to the extent of the conflict.

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 19, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 301

[Engrossed House Bill 1889]

STATE AUDITOR—INTERNAL ORGANIZATION AND ADMINISTRATION OF OFFICE

AN ACT Relating to the internal organization and administration of the office of the state auditor; amending RCW 43.09.010, 43.09.170, 43.09.180, 43.09.200, 43.09.205, 43.09.220, 43.09.230, 43.09.240, 43.09.260, 43.09.265, 43.09.270, 43.09.280, 43.09.2801, 43.09.282, 43.09.290, 43.09.310, 43.09.330, 43.09.340, 43.09.410, 43.09.412, 43.09.414, 43.09.416, 43.09.418, 3.30.070, 3.62.020, 14.08.090, 35.02.132, 35.07.230, 35.21.270, 35.23.121, 35.23.535, 35.27.510, 35.33.031, 35.33.041, 35.33.075, 35.33.111, 35.34.050, 35.34.060, 35.34.120, 35.34.130, 35.34.190, 35.76.020, 35.76.030, 35.76.050, 35A.33.030, 35A.33.040, 35A.33.075, 35A.33.110, 35A.34.050, 35A.34.060, 35A.34.120, 35A.34.130, 35A.34.190, 35A.37.010, 36.22.140, 36.40.030, 36.40.040, 36.40.080, 36.40.220, 36.47.060, 36.68.530, 36.69.160, 36.80.080, 36.82.200, 40.14.070, 42.24.080, 42.24.090, 53.06.060, 56.08.110, 57.08.110, 70.12.070, and 26.04.210; adding new sections to chapter 43.09 RCW; and repealing RCW 43.09.030, 43.09.040, 43.09.190, 43.09.250, and 43.09.300.

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

Sec. 1. RCW 43.09.010 and 1965 c 8 s 43.09.010 are each amended to read as follows:

The state auditor shall reside and keep his or her office at the seat of government. Before entering upon his or her duties he or she shall execute and deliver to the secretary of state a bond to the state in the sum of fifty thousand dollars, to be approved by the governor, conditioned for the faithful performance of all duties required (~~(of him)~~) by law. He or she shall take an oath of office before any person authorized to administer oaths, and file a copy thereof, together with (~~(his)~~) the required bond, in the office of the secretary of state.

NEW SECTION. Sec. 2. The state auditor may appoint deputies and assistant directors as necessary to carry out the duties of the office of the state auditor. These individuals serve at the pleasure of the state auditor and are exempt from the provisions of chapter 41.06 RCW as stated in RCW 41.06.070(1)(y).

NEW SECTION. Sec. 3. The state auditor may appoint and employ other assistants and personnel necessary to carry out the work of the office of the state auditor.

NEW SECTION. Sec. 4. The state auditor may contract with public accountants certified in Washington to carry out those portions of the duties of auditing state agencies and local governments as the state auditor may determine.

NEW SECTION. Sec. 5. The state auditor, his or her employees and every person legally appointed to perform such service, may issue subpoenas and compulsory process and direct the service thereof by any constable or sheriff,

compel the attendance of witnesses and the production of books and papers before him or her at any designated time and place, and may administer oaths.

When any person summoned to appear and give testimony neglects or refuses to do so, or neglects or refuses to answer any question that may be put to him or her touching any matter under examination, or to produce any books or papers required, the person making such examination shall apply to a superior court judge of the proper county to issue a subpoena for the appearance of such person before him or her; and the judge shall order the issuance of a subpoena for the appearance of such person forthwith before him or her to give testimony; and if any person so summoned fails to appear, or appearing, refuses to testify, or to produce any books or papers required, he or she shall be subject to like proceedings and penalties for contempt as witnesses in the superior court. Willful false swearing in any such examination shall be perjury and punishable as such.

Sec. 6. RCW 43.09.170 and 1965 c 8 s 43.09.170 are each amended to read as follows:

The state auditor may administer all oaths required by law in matters pertaining to the duties of his or her office.

Sec. 7. RCW 43.09.180 and 1965 c 8 s 43.09.180 are each amended to read as follows:

The state auditor shall keep a seal of office for the identification of all papers, writings, and documents required by law to be certified by him or her, and copies authenticated and certified of all papers and documents lawfully deposited in his or her office shall be received in evidence with the same effect as the originals.

NEW SECTION. Sec. 8. State agencies and local governments shall immediately report to the state auditor's office known or suspected loss of public funds or assets or other illegal activity.

Sec. 9. RCW 43.09.200 and 1965 c 8 s 43.09.200 are each amended to read as follows:

The state auditor(~~(, through such division,)~~) shall formulate, prescribe, and install a system of accounting and reporting for all local governments, which shall be uniform for every public institution, and every public office, and every public account of the same class.

The system shall exhibit true accounts and detailed statements of funds collected, received, and expended for account of the public for any purpose whatever, and by all public officers, employees, or other persons.

The accounts shall show the receipt, use, and disposition of all public property, and the income, if any, derived therefrom; all sources of public income, and the amounts due and received from each source; all receipts, vouchers, and other documents kept, or required to be kept, necessary to isolate and prove the validity of every transaction; all statements and reports made or required to be made, for the internal administration of the office to which they pertain; and all

reports published or required to be published, for the information of the people regarding any and all details of the financial administration of public affairs.

Sec. 10. RCW 43.09.205 and 1987 c 120 s 4 are each amended to read as follows:

The state auditor(~~(, through the division of municipal corporations,))~~ shall prescribe a standard form with which the accounts and records of costs of all local governments shall be maintained as required under RCW 39.04.070.

Sec. 11. RCW 43.09.220 and 1965 c 8 s 43.09.220 are each amended to read as follows:

Separate accounts shall be kept for every public service industry of every local government, which shall show the true and entire cost of the ownership and operation thereof, the amount collected annually by general or special taxation for service rendered to the public, and the amount and character of the service rendered therefor, and the amount collected annually from private users for service rendered to them, and the amount and character of the service rendered therefor.

Sec. 12. RCW 43.09.230 and 1993 c 18 s 2 are each amended to read as follows:

The state auditor shall require from every (~~(taxing district and other political subdivisions))~~ local government 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))~~ state auditor 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))~~ local government; (2) a statement of the entire public debt of every (~~(taxing district))~~ local government, 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))~~ certification.

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

Sec. 13. RCW 43.09.240 and 1991 c 245 s 13 are each amended to read as follows:

Every public officer and employee of a local government shall keep all accounts of his or her office in the form prescribed and make all reports required by the state auditor. Any public officer or employee who refuses or willfully neglects to perform such duties shall be subject to removal from office in an appropriate proceeding for that purpose brought by the attorney general or by any prosecuting attorney.

Every public officer and employee, whose duty it is to collect or receive payments due or for the use of the public shall deposit such moneys collected or received by him or her with the treasurer of the ~~((taxing district))~~ local government once every twenty-four consecutive hours. The treasurer may in his or her discretion grant an exception where such daily transfers would not be administratively practical or feasible.

In case a public officer or employee collects or receives funds for the account of a ~~((taxing district))~~ local government of which he or she is an officer or employee, the treasurer shall, by Friday of each week, pay to the proper officer of the ~~((taxing district))~~ local government for the account of which the collection was made or payment received, the full amount collected or received during the current week for the account of the district.

NEW SECTION. **Sec. 14.** The state auditor has the power to examine all the financial affairs of every local government and its officers and employees.

Sec. 15. RCW 43.09.260 and 1991 sp.s. c 30 s 26 are each amended to read as follows:

~~((The state auditor, the chief examiner, and every state examiner shall have power by himself or herself or by any person legally appointed to perform the service, to examine into all financial affairs of every public office and officer.))~~

The examination of the financial affairs of all ~~((taxing districts))~~ local governments shall be made at such reasonable, periodic intervals as the state auditor shall determine. However, an examination of the financial affairs of all ~~((taxing districts))~~ local governments shall be made at least once in every three years, and an examination of individual local government health and welfare benefit plans and local government self-insurance programs shall be made at least once every two years. The term ~~((“taxing districts”))~~ local governments for purposes of ~~((RCW 43.09.190 through 43.09.285))~~ this chapter includes but is not limited to all counties, cities, and other political subdivisions, municipal corporations, and quasi-municipal corporations, however denominated.

The state auditor shall establish a schedule to govern the auditing of ~~((taxing districts))~~ local governments which shall include: A designation of the various classifications of ~~((taxing districts))~~ local governments; a designation of the frequency for auditing each type of ~~((taxing district))~~ local government; and a description of events which cause a more frequent audit to be conducted.

On every such examination, inquiry shall be made as to the financial condition and resources of the ~~((taxing district))~~ local government; whether the Constitution and laws of the state, the ordinances and orders of the ~~((taxing district))~~ local government, and the requirements of the ~~((division of municipal corporations))~~ state auditor have been properly complied with; and into the methods and accuracy of the accounts and reports.

~~((The state auditor, his or her deputies, every state examiner and every person legally appointed to perform such service, may issue subpoenas and compulsory process and direct the service thereof by any constable or sheriff, compel the attendance of witnesses and the production of books and papers before him or her at any designated time and place, and may administer oaths.~~

~~When any person summoned to appear and give testimony neglects or refuses so to do, or neglects or refuses to answer any question that may be put to him or her touching any matter under examination, or to produce any books or papers required, the person making such examination shall apply to a superior court judge of the proper county to issue a subpoena for the appearance of such person before him or her; and the judge shall order the issuance of a subpoena for the appearance of such person forthwith before him to give testimony; and if any person so summoned fails to appear, or appearing, refuses to testify, or to produce any books or papers required, he or she shall be subject to like proceedings and penalties for contempt as witnesses in the superior court. Willful false swearing in any such examination shall be perjury and punishable as such.))~~

A report of such examination shall be made ~~((in triplicate, one copy to be))~~ and filed in the office of ~~((the))~~ state auditor, and one ~~((in))~~ copy shall be transmitted to the ~~((auditing department of the taxing district reported upon, and one in the office of the attorney general))~~ local government. A copy of any report containing findings of noncompliance with state law shall be transmitted to the attorney general. If any such report discloses malfeasance, misfeasance, or nonfeasance in office on the part of any public officer or employee, within thirty days from the receipt of his or her copy of the report, the attorney general shall institute, in the proper county, such legal action as is proper in the premises by civil process and prosecute the same to final determination to carry into effect the findings of the examination.

It shall be unlawful for ~~((the county commissioners or any board or officer))~~ any local government or the responsible head thereof, to make a settlement or compromise of any claim arising out of such malfeasance, misfeasance, or nonfeasance, or any action commenced therefor, or for any court to enter upon any compromise or settlement of such action, without the written approval and consent of the attorney general and the state auditor.

Sec. 16. RCW 43.09.265 and 1979 ex.s. c 218 s 7 are each amended to read as follows:

The state auditor (~~(, through the division of municipal corporations,)~~) shall review the tax levies of all (~~(municipal corporations)~~) local governments in the regular examinations under RCW 43.09.260.

Sec. 17. RCW 43.09.270 and 1993 c 315 s 1 are each amended to read as follows:

The expense of (~~(maintaining and operating the division of municipal corporations)~~) auditing local governments and those expenses directly related to (~~(the)~~) prescribing (~~(of)~~) accounting systems, training, maintenance of working capital including reserves for late and (~~(uncollectable)~~) uncollectible 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.

Sec. 18. RCW 43.09.280 and 1979 c 71 s 2 are each amended to read as follows:

The expense of auditing public accounts shall be borne by each entity subject to such audit for the auditing of all accounts under its jurisdiction and the state auditor shall certify the expense of such audit to the fiscal or warrant-issuing officer of such entity, who shall immediately make payment to the (~~(division of municipal corporations)~~) state auditor. If the expense as certified is not paid by any (~~(taxing district)~~) local government within thirty days from the date of certification, the state auditor may certify the expense to the auditor of the county in which the (~~(taxing district)~~) local government is situated, who shall promptly issue his or her warrant on the county treasurer payable out of the current expense fund of the county, which fund, except as to auditing the financial affairs and making inspection and examination of the county, shall be reimbursed by the county auditor or chief financial officer out of the money due (~~(said taxing district)~~) the local government at the next monthly settlement of the collection of taxes and shall be transferred to the current expense fund.

Sec. 19. RCW 43.09.2801 and 1992 c 44 s 11 are each amended to read as follows:

(1) From July 1, 1992, to June 30, 1995, the state auditor shall charge an entity subject to an audit an additional ten cents per hour billed under RCW 43.09.270 and 43.09.280, to be deposited in the local government administrative (~~(hearing[s])~~) hearings account.

(2) After June 30, 1995, the state auditor shall base the amount to be collected and deposited into the local government administrative (~~(hearing[s])~~) hearings account on the funds remaining in the account on June 30, 1995, and the anticipated caseload for the future.

(3) The state auditor may exempt a local government that (~~(empties)~~) certifies that it is in compliance with RCW 42.41.050 from a charge added under subsection (1) or (2) of this section.

Sec. 20. RCW 43.09.282 and 1982 c 206 s 2 are each amended to read as follows:

For the purposes of centralized funding, accounting, and distribution of the costs of the audits performed on ~~((taxing districts))~~ local governments by the state auditor, there is hereby created ~~((a fund))~~ an account entitled the municipal revolving ~~((fund))~~ account. The state treasurer shall be custodian of the ~~((fund))~~ account. All moneys received by the ~~((division of municipal corporations))~~ state auditor or by any officer or employee thereof shall be deposited with the state treasurer and credited to the municipal revolving ~~((fund))~~ account. ~~((Funds in the municipal revolving fund will be spent only after appropriation by the legislature. Such appropriated funds shall be administered by the division of municipal corporations.))~~ Only the state auditor or the auditor's designee may authorize expenditures from the account. No appropriation is required for expenditures. The ~~((division of municipal corporations))~~ state auditor shall keep such records as are necessary to detail the auditing costs attributable to the various types of ~~((taxing districts))~~ local governments.

Sec. 21. RCW 43.09.290 and 1981 c 336 s 6 are each amended to read as follows:

For the purposes of RCW 43.09.290 through 43.09.340 and 43.09.410 through 43.09.418, post-audit means an ~~((annual))~~ audit of the books, records, funds, accounts, and financial transactions of a state ~~((department))~~ agency for a complete fiscal period; pre-audit means all other audits and examinations; state ~~((department))~~ agency means elective officers and offices, and every other office, officer, department, board, council, committee, commission, or authority~~((or agency))~~ of the state government now existing or hereafter created, supported, wholly or in part, by appropriations from the state treasury or funds under its control, or by the levy, assessment, collection, or receipt of fines, penalties, fees, licenses, sales of commodities, service charges, rentals, grants-in-aid, or other income provided by law, and all state educational, penal, reformatory, charitable, eleemosynary, or other institutions, supported, wholly or in part, by appropriations from the state treasury or funds under its control.

Sec. 22. RCW 43.09.310 and 1981 c 217 s 1 are each amended to read as follows:

The state auditor~~((, through the division of departmental audits,))~~ shall annually audit the state-wide combined financial statements prepared by the office of financial management and make post-audits of state agencies. Post-audits of state agencies shall be made at such periodic intervals as is determined by the state auditor. Audits of combined financial statements shall include determinations as to the validity and accuracy of accounting methods, procedures and standards utilized in their preparation, as well as the accuracy of the financial statements themselves. A report shall be made of each such audit and post-audit upon completion thereof, and one copy shall be transmitted to the governor, one to the director of financial management, ~~((one to the attorney~~

~~general,)) one to the state ((department)) agency audited, one to the legislative budget committee, one each to the standing committees on ways and means of the house and senate, one to the chief clerk of the house, one to the secretary of the senate, and at least one shall be kept on file in the office of the state auditor. ((For purposes of reporting the annual audit of state-wide combined financial statements, "state department audited" refers solely to the office of financial management.)) A copy of any report containing findings of noncompliance with state law shall be transmitted to the attorney general.~~

Sec. 23. RCW 43.09.330 and 1965 c 8 s 43.09.330 are each amended to read as follows:

~~((The state auditor, the chief examiner, and every state examiner of the division of departmental audits, for the purpose of making post-audits, may issue subpoenas and compulsory process and direct the service thereof by any constable or sheriff to compel the attendance of witnesses and the production of books and papers before him at any designated time and place, and may administer oaths.~~

~~If any person summoned neglects or refuses to appear, or neglects or refuses to answer any question that may be put to him touching any matter under audit, or to produce any books or papers required, the person making such audit shall apply to a superior court judge of the county where the hearing arose to issue a subpoena for the appearance of such person before him; and the judge shall order the issuance of a subpoena for the appearance of such person forthwith before him to give testimony; and if any person so summoned fails to appear, or appearing refuses to testify or to produce any books or papers required, he shall be subject to like proceedings and penalties for contempt as witnesses in the superior court. Wilful false swearing in any such examination shall be perjury and punishable as such.))~~

If any audit of a state agency discloses malfeasance, misfeasance, or nonfeasance in office on the part of any public officer or employee, within thirty days from the receipt of his or her copy of the report, the attorney general shall institute and prosecute in the proper county, appropriate legal action to carry into effect the findings of such post-audit. It shall be unlawful for any state ((department)) agency or the responsible head thereof, to make a settlement or compromise of any claim arising out of such malfeasance, misfeasance, or nonfeasance, or any action commenced therefor, or for any court to enter upon any compromise or settlement of such action without the written approval and consent of the attorney general and the state auditor.

Sec. 24. RCW 43.09.340 and 1979 c 151 s 93 are each amended to read as follows:

The governor ~~((may, from time to time))~~ shall, at least every two years, provide for a post-audit of the books, accounts, and records of the state auditor, and the funds under his or her control, to be made either by independent qualified public accountants or the director of financial management, as he or she

may determine. The expense of making such audit shall be paid from appropriations made therefor from the general fund.

Sec. 25. RCW 43.09.410 and 1981 c 336 s 1 are each amended to read as follows:

An auditing services revolving ~~((fund))~~ account is hereby created in the state treasury for the purpose of a centralized funding, accounting, and distribution of the actual costs of the audits provided to state ~~((departments))~~ agencies by the state auditor.

Sec. 26. RCW 43.09.412 and 1987 c 165 s 1 are each amended to read as follows:

The amounts to be disbursed from the auditing services revolving ~~((fund))~~ account shall ~~((be transferred thereto by the state treasurer))~~ be paid from funds appropriated to any and all state ~~((departments))~~ agencies for auditing services or administrative expenses ~~((on a monthly basis))~~. State ~~((departments))~~ agencies operating in whole or in part from nonappropriated funds shall pay into the auditing services revolving ~~((fund))~~ account such funds as will fully reimburse funds appropriated to the state auditor ~~((for any auditing services provided activities financed by nonappropriated funds))~~ for auditing services provided.

The director of financial management shall allot all such funds to the state auditor for the operation of his or her office, pursuant to appropriation, in the same manner as appropriated funds are allocated to other state ~~((departments))~~ agencies headed by elected officers under chapter 43.88 RCW.

Sec. 27. RCW 43.09.414 and 1981 c 336 s 3 are each amended to read as follows:

Disbursements from the auditing services revolving ~~((fund))~~ account shall be made pursuant to vouchers executed by the state auditor or his or her designee in accordance with RCW 43.09.412.

Sec. 28. RCW 43.09.416 and 1987 c 165 s 2 are each amended to read as follows:

The state auditor shall keep such records as are necessary to facilitate proper allocation of costs to funds and accounts and state ~~((departments))~~ agencies served and the director of financial management shall prescribe appropriate accounting procedures to accurately allocate costs to funds and accounts and state ~~((departments))~~ agencies served. The billing rate shall be established based on costs incurred in the prior biennium and anticipated costs in the new biennium. Those expenses related to training, maintenance of working capital including reserves for late and uncollectible accounts, and necessary adjustments to billings, shall be considered as expenses of auditing public accounts. Working capital shall not exceed five percent of the auditing services revolving ~~((fund))~~ account appropriation. ~~((The director of the office of financial management shall establish a committee of at least three certified public accountants with private sector audit experience to prepare general guidelines governing procedures to be used in determining audit costs and standards for measuring auditor productivity.~~

~~These proposed procedures and productivity standards shall be presented for review by the house and senate committees on ways and means prior to the 1982 regular session of the legislature.)~~

Sec. 29. RCW 43.09.418 and 1981 c 336 s 5 are each amended to read as follows:

In cases where there are unanticipated demands for auditing services or where there are insufficient funds on hand or available for payment through the auditing services revolving ~~((fund))~~ account or in other cases of necessity, the state auditor may request payment for auditing services directly from state ~~((departments))~~ agencies for whom the services are performed to the extent that revenues or other funds are available. Upon approval by the director of financial management the state ~~((department))~~ agency shall make the requested payment. The payment may be made on either an advance or reimbursable basis as approved by the director of financial management.

Sec. 30. RCW 3.30.070 and 1971 c 73 s 3 are each amended to read as follows:

The clerk of each district court shall keep uniform records of each case filed and the proceedings had therein including an accounting for all funds received and disbursed. Financial reporting shall be in such form as may be prescribed by the ~~((office of the))~~ state auditor~~((, division of municipal corporations))~~. The form of other records may be prescribed by the supreme court.

Sec. 31. RCW 3.62.020 and 1988 c 169 s 3 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fees, fines, forfeitures and penalties assessed and collected in whole or in part by district courts, except costs, fines, forfeitures and penalties assessed and collected, in whole or in part, because of the violation of city ordinances, shall be remitted by the clerk of the district court to the county treasurer at least monthly, together with a financial statement as required by the ~~((division of municipal corporations))~~ state auditor, noting the information necessary for crediting of such funds as required by law.

(2) The county treasurer shall remit thirty-two percent of the money received under subsection (1) of this section except certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received by the county treasurer under subsection (1) of this section shall be deposited in the county current expense fund.

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund.

Sec. 32. RCW 14.08.090 and 1984 c 7 s 4 are each amended to read as follows:

Any bonds to be issued by any municipality pursuant to the provisions of this chapter shall be authorized and issued in the manner and within the limitation prescribed by the Constitution and laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for public purposes generally, secured by the revenues of the airport, a mortgage on facilities, or a general tax levy as allowed by law, if the plan and system resolution are approved by the secretary of transportation or the ~~((division of municipal corporations))~~ state auditor.

Sec. 33. RCW 35.02.132 and 1991 c 360 s 4 are each amended to read as follows:

The newly elected officials shall adopt an interim budget for the interim period or until January 1 of the following year, whichever occurs first. A second interim budget shall be adopted for any period between January 1 and the official date of incorporation. These interim budgets shall be adopted in consultation with the ~~((office of the))~~ state auditor~~((, division of municipal corporations))~~.

The governing body shall adopt a budget for the newly incorporated city or town for the period between the official date of incorporation and January 1 of the following year. The mayor or governing body, whichever is appropriate shall prepare or the governing body may direct the interim city manager to prepare a preliminary budget in detail to be made public at least sixty days before the official date of incorporation as a recommendation for the final budget. The mayor, governing body, or the interim city manager shall submit as a part of the preliminary budget a budget message that contains an explanation of the budget document, an outline of the recommended financial policies and programs of the city or town for the ensuing fiscal year, and a statement of the relation of the recommended appropriation to such policies and programs. Immediately following the release of the preliminary budget, the governing body shall cause to be published a notice once each week for two consecutive weeks of a public hearing to be held at least twenty days before the official date of incorporation on the fixing of the final budget. Any taxpayer may appear and be heard for or against any part of the budget. The governing body may make such adjustments and changes as it deems necessary and may adopt the final budget at the conclusion of the public hearing or at any time before the official date of incorporation.

Sec. 34. RCW 35.07.230 and 1965 c 7 s 35.07.230 are each amended to read as follows:

If any town fails for two successive years to hold its regular municipal election, or if the officers elected at the regular election of any town fail for two successive years to qualify and the government of the town ceases to function by reason thereof, the state auditor (~~((through the division of municipal corporations))~~) may petition the superior court of the county for an order, dissolving the town. In addition to stating the facts which would justify the entry of such an order, the petition shall set forth a detailed statement of the assets and liabilities of the town insofar as they can be ascertained.

Sec. 35. RCW 35.21.270 and 1984 c 7 s 20 are each amended to read as follows:

The city engineer or the city clerk of each city or town shall maintain records of the receipt and expenditure of all moneys used for construction, repair, or maintenance of streets and arterial highways.

To assist in maintaining uniformity in such records, the (~~(division of municipal corporations))~~ state auditor, with the advice and assistance of the department of transportation, shall prescribe forms and types of records to be so maintained.

Sec. 36. RCW 35.23.121 and 1965 c 7 s 35.24.120 are each amended to read as follows:

The city clerk shall keep a full and true record of every act and proceeding of the city council and keep such books, accounts and make such reports as may be required by (~~(the division of municipal corporations in the office of))~~ the state auditor. The city clerk shall record all ordinances, annexing thereto his or her certificate giving the number and title of the ordinance, stating that the ordinance was published and posted according to law and that the record is a true and correct copy thereof. The record copy with the clerk's certificate shall be prima facie evidence of the contents of the ordinance and of its passage and publication and shall be admissible as such evidence in any court or proceeding.

The city clerk shall be custodian of the seal of the city and shall have authority to acknowledge the execution of all instruments by the city which require acknowledgment.

The city clerk may appoint a deputy for whose acts he or she and his or her bondsmen shall be responsible, and he or she and his or her deputy shall have authority to take all necessary affidavits to claims against the city and certify them without charge.

The city clerk shall perform such other duties as may be required by statute or ordinance.

Sec. 37. RCW 35.23.535 and 1965 c 7 s 35.24.430 are each amended to read as follows:

No taxes shall be imposed for maintenance and operating charges of city owned water, light, power, or heating works or systems.

Rates shall be fixed by ordinance for supplying water, light, power, or heat for commercial, domestic, or irrigation purposes sufficient to pay for all operating and maintenance charges. If the rates in force produce a greater amount than is necessary to meet operating and maintenance charges, the rates may be reduced or the excess income may be transferred to the city's current expense fund.

Complete separate accounts for municipal utilities must be kept under the system and on forms prescribed by the ~~((division of municipal corporations in the office of the))~~ state auditor.

The term "maintenance and operating charges," as used in this section includes all necessary repairs, replacement, interest on any debts incurred in acquiring, constructing, repairing and operating plants and departments and all depreciation charges. This term shall also include an annual charge equal to four percent on the cost of the plant or system, as determined by ~~((the division of municipal corporations in the office of))~~ the state auditor to be paid into the current expense fund, except that where utility bonds have been or may hereafter be issued and are unpaid no payment shall be required into the current expense fund until such bonds are paid.

Sec. 38. RCW 35.27.510 and 1965 c 7 s 35.27.510 are each amended to read as follows:

When any special fund of a public utility department of a town has retired all bond and warrant indebtedness and is on a cash basis, if a reserve or depreciation fund has been created in an amount satisfactory to ~~((the division of municipal corporations in the office of))~~ the state auditor and if the fixing of the rates of the utility is governed by contract with the supplier of water, electrical energy, or other commodity sold by the town to its inhabitants, and the rates are at the lowest possible figure, the town council may set aside such portion of the net earnings of the utility as it may deem advisable and transfer it to the town's current expense fund; PROVIDED, That no amount in excess of fifty percent of the net earnings shall be so set aside and transferred except with the unanimous approval of the council and mayor.

Sec. 39. RCW 35.33.031 and 1969 ex.s. c 95 s 3 are each amended to read as follows:

On or before the second Monday of the fourth month prior to the beginning of the city's or town's next fiscal year, or at such other time as the city or town may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city or town to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by his or her department for the ensuing fiscal year. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by ~~((the division of municipal corporations in the office of))~~ the state auditor. The clerk shall prepare the

estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of his or her office. The chief administrative officers of the city or town shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties herein required shall devolve upon the person next in charge of such department.

Sec. 40. RCW 35.33.041 and 1969 ex.s. c 95 s 4 are each amended to read as follows:

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor (~~(through the division of municipal corporations)~~) after consultation with the Washington finance officers association, the association of Washington cities and the association of Washington city managers.

Sec. 41. RCW 35.33.075 and 1969 ex.s. c 95 s 10 are each amended to read as follows:

Following conclusion of the hearing, and prior to the beginning of the fiscal year, the legislative body shall make such adjustments and changes as it deems necessary or proper and after determining the allowance in each item, department, classification and fund, and shall by ordinance, adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal year. Such ordinances may adopt the final budget by reference: PROVIDED, That the ordinance adopting such budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to (~~the division of municipal corporations in the office of the state auditor, and to~~) the association of Washington cities.

Sec. 42. RCW 35.33.111 and 1969 ex.s. c 95 s 16 are each amended to read as follows:

The (~~division of municipal corporations in the office of the~~) state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information.

Sec. 43. RCW 35.34.050 and 1985 c 175 s 8 are each amended to read as follows:

On or before the second Monday of the fourth month prior to the beginning of the city's or town's next fiscal biennium, or at such other time as the city or

town may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city or town to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by the department for the ensuing fiscal biennium. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by ~~((the division of municipal corporations in the office of))~~ the state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of the clerk's office. The chief administrative officers of the city or town shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties required by this section shall devolve upon the person next in charge of such department.

Sec. 44. RCW 35.34.060 and 1985 c 175 s 9 are each amended to read as follows:

All estimates of receipts and expenditures for the ensuing fiscal biennium shall be fully detailed in the biennial budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor ~~((through the division of municipal corporations))~~ after consultation with the Washington finance officers association, the association of Washington cities, and the association of Washington city managers.

Sec. 45. RCW 35.34.120 and 1985 c 175 s 15 are each amended to read as follows:

Following conclusion of the hearing, and prior to the beginning of the fiscal biennium, the legislative body shall make such adjustments and changes as it deems necessary or proper and, after determining the allowance in each item, department, classification, and fund, shall by ordinance adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal biennium. Such ordinances may adopt the final budget by reference. However, the ordinance adopting the budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to ~~((the division of municipal corporations in the office of))~~ the state auditor and to the association of Washington cities.

Sec. 46. RCW 35.34.130 and 1985 c 175 s 16 are each amended to read as follows:

The legislative authority of a city or town having adopted the provisions of this chapter shall provide by ordinance for a mid-biennial review and modification of the biennial budget. The ordinance shall provide that such review and modification shall occur no sooner than eight months after the start nor later than conclusion of the first year of the fiscal biennium. The chief administrative officer shall prepare the proposed budget modification and shall provide for publication of notice of hearings consistent with publication of notices for adoption of other city or town ordinances. City or town ordinances providing for a mid-biennium review and modification shall establish procedures for distribution of the proposed modification to members of the city or town legislative authority, procedures for making copies available to the public, and shall provide for public hearings on the proposed budget modification. The budget modification shall be by ordinance approved in the same manner as are other ordinances of the city or town.

A complete copy of the budget modification as adopted shall be transmitted to ~~((the division of municipal corporations in the office of))~~ the state auditor and to the association of Washington cities.

Sec. 47. RCW 35.34.190 and 1985 c 175 s 22 are each amended to read as follows:

The ~~((division of municipal corporations in the office of the))~~ state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information.

Sec. 48. RCW 35.76.020 and 1965 c 7 s 35.76.020 are each amended to read as follows:

The state auditor ~~((, through the division of municipal corporations,))~~ shall formulate, prescribe, and install a system of cost accounting and reporting for each city having a population of more than eight thousand, according to the last official census, which will correctly show all street expenditures by functional categories. The system shall also provide for reporting all revenues available for street purposes from whatever source including local improvement district assessments and state and federal aid.

Sec. 49. RCW 35.76.030 and 1965 c 7 s 35.76.030 are each amended to read as follows:

Consistent with the intent of this chapter as stated in RCW 35.76.010, the state auditor, from and after July 1, 1965, ~~((through the division of municipal corporations,))~~ is authorized and directed to prescribe accounting and reporting procedures for street expenditures for cities and towns having a population of eight thousand or less, according to the last official census.

Sec. 50. RCW 35.76.050 and 1984 c 7 s 22 are each amended to read as follows:

The ~~((division of municipal corporations))~~ state auditor shall annually make a cost-audit examination of street records for each city and town and make a written report thereon to the legislative body of each city and town. The expense of the examination shall be paid out of that portion of the motor vehicle fund allocated to the cities and towns and withheld for use by the state department of transportation under the terms of RCW 46.68.110(1).

Sec. 51. RCW 35A.33.030 and 1967 ex.s. c 119 s 35A.33.030 are each amended to read as follows:

On or before the second Monday of the fourth month prior to the beginning of the city's next fiscal year, or at such other time as the city may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a code city to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by his or her department for the ensuing fiscal year. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the ~~((division of municipal corporations in the office of the))~~ state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of his or her office. The chief administrative officers of the city shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties herein required shall devolve upon the person next in charge of such department.

Sec. 52. RCW 35A.33.040 and 1967 ex.s. c 119 s 35A.33.040 are each amended to read as follows:

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor ~~((through the division of municipal corporations))~~ after consultation with the Washington finance officers association, the association of Washington cities and the association of Washington city managers.

Sec. 53. RCW 35A.33.075 and 1969 ex.s. c 81 s 3 are each amended to read as follows:

Following conclusion of the hearing, and prior to the beginning of the fiscal year, the legislative body shall make such adjustments and changes as it deems necessary or proper and after determining the allowance in each item, department, classification and fund, and shall by ordinance, adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current

fiscal year. Such ordinances may adopt the final budget by reference: PROVIDED, That the ordinance adopting such budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to ~~((the division of municipal corporations in the office of))~~ the state auditor, and to the association of Washington cities.

Sec. 54. RCW 35A.33.110 and 1967 ex.s. c 119 s 35A.33.110 are each amended to read as follows:

The ~~((division of municipal corporations in the office of the))~~ state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information.

Sec. 55. RCW 35A.34.050 and 1985 c 175 s 37 are each amended to read as follows:

On or before the second Monday of the fourth month prior to the beginning of the city's next fiscal biennium, or at such other time as the city may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by the department for the ensuing fiscal biennium. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the ~~((division of municipal corporations in the office of the))~~ state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of the clerk's office. The chief administrative officers of the city shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties required by this section shall devolve upon the person next in charge of such department.

Sec. 56. RCW 35A.34.060 and 1985 c 175 s 38 are each amended to read as follows:

All estimates of receipts and expenditures for the ensuing fiscal biennium shall be fully detailed in the biennial budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor ~~((through the division of municipal corporations))~~ after consultation with the Washington finance officers association, the association of Washington cities, and the association of Washington city managers.

Sec. 57. RCW 35A.34.120 and 1985 c 175 s 44 are each amended to read as follows:

Following conclusion of the hearing, and prior to the beginning of the fiscal biennium, the legislative body shall make such adjustments and changes as it deems necessary or proper and, after determining the allowance in each item, department, classification, and fund, shall by ordinance adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal biennium. Such ordinances may adopt the final budget by reference. However, the ordinance adopting the budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to ~~((the division of municipal corporations in the office of))~~ the state auditor and to the association of Washington cities.

Sec. 58. RCW 35A.34.130 and 1985 c 175 s 45 are each amended to read as follows:

The legislative authority of a city having adopted the provisions of this chapter shall provide by ordinance for a mid-biennial review and modification of the biennial budget. The ordinance shall provide that such review and modification shall occur no sooner than eight months after the start nor later than conclusion of the first year of the fiscal biennium. The chief administrative officer shall prepare the proposed budget modification and shall provide for publication of notice of hearings consistent with publication of notices for adoption of other city ordinances. City ordinances providing for a mid-biennium review and modification shall establish procedures for distribution of the proposed modification to members of the city legislative authority, procedures for making copies available to the public, and shall provide for public hearings on the proposed budget modification. The budget modification shall be by ordinance approved in the same manner as are other ordinances of the city.

A complete copy of the budget modification as adopted shall be transmitted to ~~((the division of municipal corporations in the office of))~~ the state auditor and to the association of Washington cities.

Sec. 59. RCW 35A.34.190 and 1985 c 175 s 51 are each amended to read as follows:

The ~~((division of municipal corporations in the office of the))~~ state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information.

Sec. 60. RCW 35A.37.010 and 1983 c 3 s 62 are each amended to read as follows:

Code cities shall establish such funds for the segregation, budgeting, expenditure and accounting for moneys received for special purposes as are required by general law applicable to such cities' activities and the officers thereof shall pay into, expend from, and account for such moneys in the manner provided therefor including but not limited to the requirements of the following:

- (1) Accounting funds as required by RCW 35.37.010;
- (2) Annexation and consolidation fund as required by chapters 35.10 and 35.13 RCW;
- (3) Assessment fund as required by RCW 8.12.480;
- (4) Equipment rental fund as authorized by RCW 35.21.088;
- (5) Current expense fund as required by RCW 35.37.010, usually referred to as the general fund;
- (6) Local improvement guaranty fund as required by RCW 35.54.010;
- (7) An indebtedness and sinking fund, together with separate funds for utilities and institutions as required by RCW 35.37.020;
- (8) Local improvement district fund and revolving fund as required by RCW 35.45.130 and 35.48.010;
- (9) City street fund as required by chapter 35.76 RCW and RCW 47.24.040;
- (10) Firemen's relief and pension fund as required by chapters 41.16 and 41.18 RCW;
- (11) Policemen's relief and pension fund as required by RCW 41.20.130 and 63.32.030;
- (12) First class cities' employees retirement and pension system as authorized by chapter 41.28 RCW;
- (13) Applicable rules of the ~~((division of municipal corporations office of))~~ state auditor. ~~((RCW 43.09.190 through 43.09.282.))~~

Sec. 61. RCW 36.22.140 and 1963 c 4 s 36.22.140 are each amended to read as follows:

Each county auditor or chief financial officer shall be ex officio deputy ~~((supervisor))~~ of the ~~((division of municipal corporations))~~ state auditor for the purpose of accounting and reporting on municipal corporations and in such capacity shall be under the direction of the ~~((chief supervisor))~~ state auditor, but he or she shall receive no additional salary or compensation by virtue thereof and shall perform no duties as such, except in connection with county business.

Sec. 62. RCW 36.40.030 and 1963 c 4 s 36.40.030 are each amended to read as follows:

The estimates required in RCW 36.40.010 and 36.40.020 shall be submitted on forms provided by the county auditor or chief financial officer and classified according to the classification established by the ~~((division of municipal corporations))~~ state auditor. The county auditor or chief financial officer shall provide such forms. He or she shall also prepare the estimates for interest and debt redemption requirements and any other estimates the preparation of which properly falls within the duties of his or her office.

Each such official shall file his or her estimates within the time and in the manner provided in the notice and form and the county auditor or chief financial officer shall deduct and withhold as a penalty from the salary of each official failing or refusing to file such estimates as herein provided, the sum of ten dollars for each day of delay: PROVIDED, That the total penalty against any one official shall not exceed fifty dollars in any one year.

In the absence or disability of any official the duties required herein shall devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause.

Sec. 63. RCW 36.40.040 and 1973 c 39 s 1 are each amended to read as follows:

Upon receipt of the estimates the county auditor or chief financial officer shall prepare the county budget which shall set forth the complete financial program of the county for the ensuing fiscal year, showing the expenditure program and the sources of revenue by which it is to be financed.

The revenue section shall set forth the estimated receipts from sources other than taxation for each office, department, service, or institution for the ensuing fiscal year, the actual receipts for the first six months of the current fiscal year and the actual receipts for the last completed fiscal year, the estimated surplus at the close of the current fiscal year and the amount proposed to be raised by taxation.

The expenditure section shall set forth in comparative and tabular form by offices, departments, services, and institutions the estimated expenditures for the ensuing fiscal year, the appropriations for the current fiscal year, the actual expenditures for the first six months of the current fiscal year including all contracts or other obligations against current appropriations, and the actual expenditures for the last completed fiscal year.

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor (~~((through the division of municipal corporations))~~) after consultation with the Washington state association of counties and the Washington state association of (~~((elected))~~) county officials.

The county auditor or chief financial officer shall set forth separately in the annual budget to be submitted to the (~~((board of))~~) county (~~((commissioners))~~) legislative authority the total amount of emergency warrants issued during the preceding fiscal year, together with a statement showing the amount issued for each emergency, and the board shall include in the annual tax levy, a levy sufficient to raise an amount equal to the total of such warrants: PROVIDED, That the board may fund the warrants or any part thereof into bonds instead of including them in the budget levy.

Sec. 64. RCW 36.40.080 and 1963 c 4 s 36.40.080 are each amended to read as follows:

Upon the conclusion of the budget hearing the ~~((board of))~~ county ~~((commissioners))~~ legislative authority shall fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined and enter the same in detail in the official minutes of the board, a copy of which budget shall be forwarded to the ~~((division of municipal corporations))~~ state auditor.

Sec. 65. RCW 36.40.220 and 1963 c 4 s 36.40.220 are each amended to read as follows:

The ~~((division of municipal corporations))~~ state auditor may make such rules, classifications, and forms as may be necessary to carry out the provisions in respect to county budgets, define what expenditures shall be chargeable to each budget account, and establish such accounting and cost systems as may be necessary to provide accurate budget information.

Sec. 66. RCW 36.47.060 and 1969 ex.s. c 5 s 5 are each amended to read as follows:

The financial records of the Washington state association of county officials shall be subject to audit by the ~~((Washington))~~ state ~~((division of municipal corporations))~~ auditor.

Sec. 67. RCW 36.68.530 and 1981 c 210 s 11 are each amended to read as follows:

The governing body of each park and recreation service area shall annually compile a budget for each service area in a form prescribed by the state ~~((division of municipal corporations))~~ auditor for the ensuing calendar year which shall, to the extent that anticipated income is actually realized, constitute the appropriations for the service area. The budget may include an amount to accumulate a reserve for a stated capital purpose. In compiling the budget, all available funds and anticipated income shall be taken into consideration, including contributions or contractual payments from school districts, cities, or towns, county or any other governmental entity, gifts and donations, special tax levy, fees and charges, proceeds of bond issues, and cumulative reserve funds.

Sec. 68. RCW 36.69.160 and 1963 c 4 s 36.69.160 are each amended to read as follows:

The board of park and recreation commissioners of each park and recreation district shall annually compile a budget, in form prescribed by the state ~~((division of municipal corporations))~~ auditor, for the ensuing calendar year, and which shall, to the extent that anticipated income is actually realized, constitute the appropriations for the district. The budget may include an amount to accumulate a reserve for a stated capital purpose. In compiling the budget, all available funds and anticipated income shall be taken into consideration, including contributions or contractual payments from school districts, cities or towns, county, or any other governmental unit; gifts and donations; special tax levy;

assessments; fees and charges; proceeds of bond issues; cumulative reserve funds.

Sec. 69. RCW 36.80.080 and 1985 c 120 s 3 are each amended to read as follows:

The ~~((division of municipal corporations))~~ state auditor shall annually make a cost-audit examination of the books and records of the county road engineer and make a written report thereon to the county legislative authority. The expense of the examination shall be paid from the county road fund.

Sec. 70. RCW 36.82.200 and 1963 c 4 s 36.82.200 are each amended to read as follows:

The board shall hold such hearing at the time and place designated in the notice, and it may be continued from day to day until concluded but not to exceed a total of five days. Upon the conclusion of the hearing the board shall fix and determine the supplemental budget and by resolution adopt it as finally determined and enter it in detail in the official minutes of the board, ~~((copies))~~ a copy of which supplemental budget shall be forwarded ~~((one))~~ to the director ~~((and one to the division of municipal corporations))~~.

Sec. 71. RCW 40.14.070 and 1982 c 36 s 6 are each amended to read as follows:

County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist ~~((and the chief examiner of the division of municipal corporations of the office of)),~~ a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

- (1) The records are six or more years old;

(2) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(3) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

Sec. 72. RCW 42.24.080 and 1965 c 116 s 1 are each amended to read as follows:

All claims presented against any county, city, district or other municipal corporation or political subdivision by persons furnishing materials, rendering services or performing labor, or for any other contractual purpose, shall be audited, before payment, by an auditing officer elected or appointed pursuant to statute or, in the absence of statute, an appropriate charter provision, ordinance or resolution of the municipal corporation or political subdivision. Such claims shall be prepared for audit and payment on a form and in the manner prescribed by the ~~((division of municipal corporations in the))~~ state auditor~~((s office))~~. The form shall provide for the authentication and certification by such auditing officer that the materials have been furnished, the services rendered or the labor performed as described, and that the claim is a just, due and unpaid obligation against the municipal corporation or political subdivision; and no claim shall be paid without such authentication and certification: **PROVIDED**, That the certificates as to claims of officers and employees of a county, city, district or other municipal corporation or political subdivision, for services rendered, shall be made by the person charged with the duty of preparing and submitting vouchers for the payment of services, and he or she shall certify that the claim is just, true and unpaid, which certificate shall be part of the voucher.

Sec. 73. RCW 42.24.090 and 1981 c 56 s 1 are each amended to read as follows:

No claim for reimbursement of any expenditures by officers or employees of any municipal corporation or political subdivision of the state for transportation, lodging, meals or any other purpose shall be allowed by any officer, employee or board charged with auditing accounts unless the same shall be presented in a detailed account: PROVIDED, That, unless otherwise authorized by law, the legislative body of any municipal corporation or political subdivision of the state may prescribe by ordinance or resolution the amounts to be paid officers or employees thereof as reimbursement for the use of their personal automobiles or other transportation equipment in connection with officially assigned duties and other travel for approved public purposes, or as reimbursement to such officers or employees in lieu of actual expenses incurred for lodging, meals or other purposes. The rates for such reimbursements may be computed on a mileage, hourly, per diem, monthly, or other basis as the respective legislative bodies shall determine to be proper in each instance: PROVIDED, That in lieu of such reimbursements, payments for the use of personal automobiles for official travel may be established if the legislative body determines that these payments would be less costly to the municipal corporation or political subdivision of the state than providing automobiles for official travel.

All claims authorized under this section shall be duly certified by the officer or employee submitting such claims on forms and in the manner prescribed by the (~~division of municipal corporations in the office of the~~) state auditor.

Sec. 74. RCW 53.06.060 and 1961 c 31 s 6 are each amended to read as follows:

The financial records of the Washington public ports association shall be subject to audit by the (~~Washington state division of municipal corporations of the~~) state auditor.

Sec. 75. RCW 56.08.110 and 1973 1st ex.s. c 195 s 62 are each amended to read as follows:

To improve the organization and operation of sewer districts, the commissioners of two or more such districts may form an association thereof, for the purpose of securing and disseminating information of value to the members of the association and for the purpose of promoting the more economical and efficient operation of the comprehensive plans of sewer systems in their respective districts. The commissioners of sewer districts so associated shall adopt articles of association, select such officers as they may determine, and employ and discharge such agents and employees as shall be deemed convenient to carry out the purposes of the association. Sewer district commissioners and their employees are authorized to attend meetings of the association. The expense of the association may be paid from the maintenance or general funds of the associated districts in such manner as shall be provided in the articles of association: PROVIDED, That the aggregate contributions made to the

association by the district in any calendar year shall not exceed the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property of the district. The financial records of such association shall be subject to audit by the (~~Washington state division of municipal corporations of the~~) state auditor.

Sec. 76. RCW 57.08.110 and 1973 1st ex.s. c 195 s 68 are each amended to read as follows:

To improve the organization and operation of water districts, the commissioners of two or more such districts may form an association thereof, for the purpose of securing and disseminating information of value to the members of the association and for the purpose of promoting the more economical and efficient operation of the comprehensive plans of water supply in their respective districts. The commissioners of water districts so associated shall adopt articles of association, select such officers as they may determine, and employ and discharge such agents and employees as shall be deemed convenient to carry out the purposes of the association. Water district commissioners and employees are authorized to attend meetings of the association. The expense of the association may be paid from the maintenance or general funds of the associated districts in such manner as shall be provided in the articles of association: **PROVIDED,** That the aggregate contributions made to the association by the district in any calendar year shall not exceed the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property of the district. The financial records of such association shall be subject to audit by the (~~Washington state division of municipal corporations of the~~) state auditor.

Sec. 77. RCW 70.12.070 and 1991 c 3 s 316 are each amended to read as follows:

The public health pool fund shall be subject to audit by the (~~division of departmental audits~~) state auditor and shall be subject to check by the state department of health.

Sec. 78. RCW 26.04.210 and 1985 c 82 s 5 are each amended to read as follows:

(1) The county auditor, before a marriage license is issued, upon the payment of a license fee as fixed in RCW 36.18.010 shall require each applicant therefor to make and file in (~~his~~) the auditor's office upon blanks to be provided by the county for that purpose, an affidavit showing that (~~they are not~~) if an applicant is afflicted with any contagious (~~veneral~~) sexually transmitted disease, the condition is known to both applicants, and that the applicants are the age of eighteen years or over(~~(+ PROVIDED, FURTHER, That)~~). If the consent in writing is obtained of the father, mother, or legal guardian of the person for whom the license is required, the license may be granted in cases where the female has attained the age of seventeen years or the male has attained the age of seventeen years. Such affidavit may be subscribed

and sworn to before any person authorized to administer oaths. Anyone knowingly swearing falsely to any of the statements contained in the affidavits mentioned in this section shall be deemed guilty of perjury and punished as provided by the laws of the state of Washington.

(2) The affidavit form shall be designed to require a statement that no contagious sexually transmitted disease is present or that the condition is known to both applicants, without requiring the applicants to state whether or not either or both of them are afflicted by such disease.

NEW SECTION. Sec. 79. The following acts or parts of acts are each repealed:

- (1) RCW 43.09.030 and 1965 c 8 s 43.09.030;
- (2) RCW 43.09.040 and 1965 c 8 s 43.09.040;
- (3) RCW 43.09.190 and 1965 c 8 s 43.09.190;
- (4) RCW 43.09.250 and 1988 c 52 s 1 & 1965 c 8 s 43.09.250; and
- (5) RCW 43.09.300 and 1988 c 53 s 1 & 1965 c 8 s 43.09.300.

NEW SECTION. Sec. 80. Sections 2 through 5, 8, and 14 of this act are each added to chapter 43.09 RCW.

Passed the House April 20, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 302

[Substitute House Bill 1906]

CHILD CARE LICENSING

AN ACT Relating to child care licensing; amending RCW 74.15.010, 74.15.020, 74.15.030, 74.15.130, 74.15.100, and 74.15.120; adding new sections to chapter 74.15 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 declares that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of children, including those who receive care away from their own homes. The legislature further declares that no person or agency has a right to be licensed under this chapter to provide care for children. The health, safety, and well-being of children must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, and whether to take other licensing action. The legislature intends, through the provisions of this act, to provide the department of social and health services with additional enforcement authority to carry out the purpose and provisions of this act. Furthermore, administrative law judges should receive specialized training so that they have the specialized expertise required to appropriately review licensing decisions of the department.

Children placed in foster care are particularly vulnerable and have a special need for placement in an environment that is stable, safe, and nurturing. For this reason, foster homes should be held to a high standard of care, and department decisions regarding denial, suspension, or revocation of foster care licenses should be upheld on review if there are reasonable grounds for such action.

Sec. 2. RCW 74.15.010 and 1983 c 3 s 192 are each amended to read as follows:

The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

(1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups(---);

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons.

Sec. 3. RCW 74.15.020 and 1994 c 273 s 21 are each amended to read as follows:

For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of social and health services;

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Child day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Family day-care provider" means a (~~licensed~~) child day-care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

(f) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(g) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

(4) "Agency" shall not include the following:

(a) ~~Persons related ((by blood or marriage to the child, expectant mother, or persons with developmental disabilities in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first cousin))~~ to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (4)(a), even after the marriage is terminated; or

(v) "Extended family members," as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle brother or sister brother-in-law or sister-in-law niece, or nephew first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where: (i) The person providing care for periods of less than twenty-four hours does not ((engage in)) conduct such activity on ((a regular

~~basis, or where))~~ an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care; or (ii) the parent and person providing care on a twenty-four hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

~~(d)~~ Parents on a mutually cooperative basis exchange care of one another's children(~~(, or persons who have the care of an exchange student in their own home))~~);

~~((d))~~ (e) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

~~((e))~~ (f) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

~~((f))~~ (g) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

~~((g))~~ (h) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

~~((h))~~ (i) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

~~((i))~~ (j) Licensed physicians or lawyers;

~~((j))~~ (k) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

~~((k))~~ (l) Facilities approved and certified under chapter 71A.22 RCW;

~~((l))~~ (m) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

~~((m))~~ (n) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

~~((n))~~ (o) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

~~((o))~~ (p) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(5) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

Sec. 4. RCW 74.15.030 and 1988 c 189 s 3 are each amended to read as follows:

The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or developmentally disabled persons. In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee except that in the case of a foster family home, if this expense would work a hardship on the licensee, the department shall pay the expense. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The secretary shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, and developmentally disabled persons. Criminal justice agencies shall provide the

secretary such information as they may have and that the secretary may require for such purpose;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.060 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with the child care coordinating committee and other affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons.

Sec. 5. RCW 74.15.130 and 1989 c 175 s 149 are each amended to read as follows:

(1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed seventy-five dollars per violation for a family day-care home and two hundred fifty dollars per violation for group homes, child day-care centers, and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall

provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

NEW SECTION. Sec. 6. A new section is added to chapter 74.15 RCW to read as follows:

(1) The office of administrative hearings shall not assign nor allow an administrative law judge to preside over an adjudicative hearing regarding denial, modification, suspension, or revocation of any license to provide child care, including foster care, under this chapter, unless such judge has received training related to state and federal laws and department policies and procedures regarding:

- (a) Child abuse, neglect, and maltreatment;
- (b) Child protective services investigations and standards;
- (c) Licensing activities and standards;
- (d) Child development; and
- (e) Parenting skills.

(2) The office of administrative hearings shall develop and implement a training program that carries out the requirements of this section. The office of administrative hearings shall consult and coordinate with the department in developing the training program. The department may assist the office of administrative hearings in developing and providing training to administrative law judges.

NEW SECTION. Sec. 7. A new section is added to chapter 74.15 RCW to read as follows:

(1) The department may issue a probationary license to a licensee who has had a license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(3) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(4) An existing license is invalidated when a probationary license is issued.

(5) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(6) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license.

Sec. 8. RCW 74.15.100 and 1982 c 118 s 11 are each amended to read as follows:

Each agency shall make application for a license or renewal of license to the department of social and health services on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Such a foster home license shall cease to be valid when the home is no longer under the supervision of that agency. Upon receipt of such application, the department shall either grant or deny a license within ninety days unless the application is for licensure as a foster-family home, in which case RCW 74.15.040 shall govern. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that (~~a-provisional~~) an initial license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of three years. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed foster-family and family day-care homes having an acceptable history of child care, the license may remain in effect for two weeks after a move, except that for the foster-family home this will apply only if the family remains intact.

***Sec. 9.** RCW 74.15.120 and 1979 c 141 s 361 are each amended to read as follows:

The secretary of social and health services may, at his or her discretion, issue (~~a-provisional~~) an initial license instead of a full license to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license(~~(, except that a-provisional)~~). An initial license shall not be granted to any foster-family home except as provided in rules adopted by the department.

*Sec. 9 was vetoed. See message at end of chapter.

Passed the House April 19, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 9, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 9, 1995.

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

"I am returning herewith, without my approval as to section 9, Substitute House Bill No. 1906 entitled:

"AN ACT Relating to child care licensing;"

Substitute House Bill No. 1906 clarifies that the health and safety of children is paramount over the right of any person to be licensed to provide care. Section 9 provides guidelines for the issuance of initial foster-family home licenses. Section 22 of Engrossed Substitute Senate Bill No. 5885 offers the same guidelines, but explicitly spells out the conditions required for issuing an initial license. Vetoing section 9 of Substitute House Bill No. 1906 gives full effect to this bill while including the greater specificity offered by section 22 of Engrossed Substitute Senate Bill No. 5885.

For this reason, I have vetoed section 9 of Substitute House Bill No. 1906.

With the exception of section 9, Substitute House Bill No. 1906 is approved."

CHAPTER 303

[Engrossed Second Substitute House Bill 1941]

READING LITERACY IMPROVEMENT

AN ACT Relating to the improvement of reading literacy; adding a new section to chapter 28A 630 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 the ability to read with comprehension and skill is essential for success in school, and for success in future life. As we enter into the twenty-first century, the ability to read is critical to personal and family prosperity. It is the intent of the legislature to improve student learning by focusing on reading literacy in our public schools.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.630 RCW to read as follows:

(1) The elementary grades assessment developed by the commission on student learning under RCW 28A.630.885(3)(b)(i) shall require that all public school students are assessed for reading literacy skills in the third grade no later than March 31st.

(2) The reading assessment in subsection (1) of this section shall be available for use by elementary schools no later than the 1996-97 school year. Elementary schools are encouraged to begin implementation of the assessment in the 1996-97 and 1997-98 school years.

(3) Notwithstanding the assessment implementation dates in RCW 28A.630.885, the reading assessment in subsection (1) of this section shall be implemented state-wide to all public school third-grade students in the 1998-99 school year.

(4) The information provided by the reading assessment shall be used by educators as a tool to evaluate instructional practices and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements for reading. The type of support to be provided to students shall be determined by school districts. School districts shall periodically reassess students who have not mastered the essential academic learning requirements for reading, and shall continue to provide appropriate reading support for students who have not mastered these essential academic learning requirements. The results of the reading assessment shall not be used for school or school district accountability purposes.

Passed the House April 22, 1995.

Passed the Senate April 22, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 304

[Substitute House Bill 1995]

HEALTH INSURANCE COVERAGE ACCESS ACT—TAX EXEMPTION FOR PREPAYMENTS

AN ACT Relating to provision of a tax exemption and offset for premiums and prepayments for policies under the health insurance coverage access act; amending RCW 48.14.022; and declaring an emergency.

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

Sec. 1. RCW 48.14.022 and 1987 c 431 s 23 are each amended to read as follows:

(1) The taxes imposed in RCW 48.14.020 and 48.14.0201 do not apply to premiums and prepayments collected or received for policies of insurance issued under RCW 48.41.010 through 48.41.210.

(2) In computing tax due under RCW 48.14.020 and 48.14.0201, there may be deducted from taxable premiums and prepayments the amount of any assessment against the taxpayer under RCW 48.41.010 through 48.41.210. Any portion of the deduction allowed in this section which cannot be deducted in a tax year without reducing taxable premiums below zero may be carried forward and deducted in successive years until the deduction is exhausted.

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 21, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 305

[Engrossed House Bill 2057]

JUDGES—RETIREMENT ELIGIBILITY

AN ACT Relating to retirement eligibility; amending RCW 2.10.100; and creating a new section.

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

Sec. 1. RCW 2.10.100 and 1988 c 109 s 3 are each amended to read as follows:

Retirement of a member for service shall be made by the retirement board as follows:

(1) Any judge who, on August 9, 1971 or within one year thereafter, shall have completed as a judge the years of actual service required under chapter 2.12 RCW and who shall elect to become a member of this system, shall in all respects be deemed qualified to retire under this retirement system upon ((his)) the member's written request.

(2) Any member who has completed fifteen or more years of service may be retired upon ((his)) the member's written request but shall not be eligible to receive a retirement allowance until the member attains the age of sixty years.

(3) Any member who attains the age of seventy-five years shall be retired at the end of the calendar year in which ((he)) the member attains such age.

(4) Any judge who involuntarily leaves service or who is appointed to a position as a federal judge or federal magistrate at any time after having served an aggregate of twelve years shall be eligible to a partial retirement allowance computed according to RCW 2.10.110 and shall receive this allowance upon the attainment of the age of sixty years and fifteen years after the beginning of ((his)) the member's judicial service.

NEW SECTION. **Sec. 2.** Section 1 of this act shall apply retroactively to October 1, 1994.

Passed the House March 13, 1995.
Passed the Senate April 22, 1995.
Approved by the Governor May 9, 1995.
Filed in Office of Secretary of State May 9, 1995.

CHAPTER 306

[Substitute House Bill 2067]

NONPROFIT ARTS, SCIENTIFIC, OR HISTORICAL ORGANIZATIONS—EXTENSION OF PROPERTY TAX EXEMPTION

AN ACT Relating to property tax exemptions for nonprofit arts, scientific, or historical organizations; amending RCW 84.36.060; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 84.36.060 and 1981 c 141 s 1 are each amended to read as follows:

The following property shall be exempt from taxation:

(1) All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections; and all the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance(~~(+ PROVIDED, That to qualify for)~~).

(a) To receive this exemption an organization must be organized and operated exclusively for artistic, scientific, historical, literary, musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public(+).

(b) If the property is not currently being used for an exempt purpose but will be used for an exempt purpose within a reasonable period of time, the nonprofit organization, association, or corporation claiming the exemption must submit proof that a reasonably specific and active program is being carried out to construct, remodel, or otherwise enable the property to be used for an exempt purpose. The property does not qualify for an exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise. Proof of a specific and active program to build or remodel the property so it may be used for an exempt purpose may include, but is not limited to:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation toward an active program of construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling;

or

(iv) Building permits.

(c) Notwithstanding (b) of this subsection, a for-profit limited partnership created to provide facilities for the use of nonprofit art, scientific, or historical organizations qualifies for the exemption under (b) of this subsection through 1997 if the for-profit limited partnership otherwise qualifies under (b) of this subsection.

(2) All fire engines and other implements used for the extinguishment of fire, with the buildings used exclusively for the safekeeping thereof, and for meetings of fire companies, provided such properties belong to any city or town or to a fire company therein(+).

(3) Property owned by humane societies in this state in actual use by such societies.

NEW SECTION. Sec. 2. The act is effective for taxes levied for collection in 1995 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 April 19, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 307

[Substitute Senate Bill 5333]

INVESTMENT OF TRUST FUNDS

AN ACT Relating to investment of trust funds; amending RCW 11.100.010, 11.100.020, 11.100.035, and 11.100.130; adding new sections to chapter 11.100 RCW; 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 11.100.010 and 1985 c 30 s 63 are each amended to read as follows:

Any corporation, association, or person handling or investing trust funds as a fiduciary shall be governed in the handling and investment of such funds as in this chapter specified. A fiduciary who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with requirements of this chapter. The specific requirements of this chapter may be expanded, restricted, eliminated, or otherwise altered by provisions of the controlling instrument.

Sec. 2. RCW 11.100.020 and 1985 c 30 s 65 are each amended to read as follows:

(1) A fiduciary is authorized to acquire and retain every kind of property. In acquiring, investing, reinvesting, exchanging, selling and managing property for the benefit of another, a fiduciary, in determining the prudence of a particular investment, shall give due consideration to the role that the proposed investment or investment course of action plays within the overall portfolio of assets. In applying such total asset management approach, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, and if the fiduciary has special skills or is named trustee on the basis of representations of special skills or expertise, the fiduciary is under a duty to use those skills.

(2) Except as may be provided to the contrary in the instrument, the following are among the factors that should be considered by a fiduciary in applying this total asset management approach:

- (a) The probable income as well as the probable safety of their capital;
- (b) Marketability of investments;
- (c) General economic conditions;
- (d) Length of the term of the investments;
- ~~((d))~~ (e) Duration of the trust;
- ~~((e))~~ (f) Liquidity needs;
- ~~((f))~~ (g) Requirements of the beneficiary or beneficiaries;
- ~~((g))~~ (h) Other assets of the beneficiary or beneficiaries, including earning capacity; and
- ~~((h))~~ (i) Effect of investments in increasing or diminishing liability for taxes.

(3) Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a fiduciary is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment specifically including but not by way of limitation, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion, and intelligence acquire for their own account.

Sec. 3. RCW 11.100.035 and 1994 c 221 s 68 are each amended to read as follows:

(1) Within the standards of judgment and care established by law, and subject to any express provisions or limitations contained in any particular trust instrument, guardians, trustees, and other fiduciaries, whether individual or corporate, are authorized to acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940 as now or hereafter amended.

(2) Within the limitations of subsection (1) of this section, whenever the trust instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the ~~((trustee))~~ fiduciary may invest in and hold such obligations either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(a) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(b) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

(3) If the fiduciary is a bank or trust company, then the fact that the fiduciary, or an affiliate of the fiduciary, provides services to the investment

company or investment trust such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities of the open-end or closed-end management investment company or investment trust. The fiduciary shall furnish a copy of the prospectus relating to the securities to each person to whom a regular periodic accounting would ordinarily be rendered under the trust instrument or under RCW 11.106.020, upon the request of that person. The restrictions set forth under RCW 11.100.090 may not be construed as prohibiting the fiduciary powers granted under this subsection.

NEW SECTION. Sec. 4. A new section is added to chapter 11.100 RCW to read as follows:

A fiduciary shall invest and manage the trust assets solely in the interests of the trust beneficiaries. If a trust has two or more beneficiaries, the fiduciary shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

NEW SECTION. Sec. 5. A new section is added to chapter 11.100 RCW to read as follows:

Subject to the provisions of RCW 11.100.060 and any express provisions in the trust instrument to the contrary, a fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Sec. 6. RCW 11.100.130 and 1985 c 30 s 77 are each amended to read as follows:

Whenever power or authority to direct or control the acts of a (~~trustee~~) fiduciary or the investments of a trust is conferred directly or indirectly upon any person other than the designated trustee of the trust, such person shall be deemed to be a fiduciary and shall be liable to the beneficiaries of (~~said~~) the trust and to the designated trustee to the same extent as if he or she were a designated trustee in relation to the exercise or nonexercise of such power or authority.

NEW SECTION. Sec. 7. This act applies prospectively only and not retroactively.

****NEW SECTION. Sec. 8. 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, 1995.***

*Sec. 8 was vetoed. See message at end of chapter.

Passed the Senate April 19, 1995.

Passed the House April 13, 1995.

Approved by the Governor May 9, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 9, 1995.

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

"I am returning herewith, without my approval as to section 8, Substitute Senate Bill No. 5333 entitled:

"AN ACT Relating to investment of trust lands;"

This legislation includes an emergency clause in section 8. Although the clarification of the fiduciary's responsibility to trust assets is important, it is not a matter necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Preventing this bill from being subject to a referendum under Article II, section 1 (b) of the state Constitution unnecessarily denies the people of this state their power, at their own option, to approve or reject this bill at the polls.

For this reason, I have vetoed section 8 of Substitute Senate Bill No. 5333.

With the exception of section 8, Substitute Senate Bill No. 5333 is approved."

CHAPTER 308

[Engrossed Substitute Senate Bill 5880]

RETIREMENT TO CARE FOR DISABLED SPOUSE—PUBLIC EMPLOYEES' RETIREMENT SYSTEM PLAN I

AN ACT Relating to retirement in order to care for a disabled spouse; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** A member of plan I of the public employee's retirement system who has at least twenty years of service and whose spouse has become severely and permanently incapacitated prior to the effective date of this act, may be retired and receive a benefit under RCW 41.40.190 actuarially reduced from the earliest age the member could have retired under RCW 41.40.180, subject to the following conditions:

- (1) The member's spouse is mentally or physically incapacitated and the incapacity is likely to be permanent;
- (2) The member's spouse needs twenty-four hour, in-home care; and
- (3) The member's application for retirement is received prior to July 1, 1995.

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, 1995.

Passed the House April 11, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 309

[Senate Bill 6004]

**CITIES AND COUNTIES—JOINT AGREEMENTS FOR CRIMINAL
JUSTICE PURPOSES**

AN ACT Relating to joint agreements between cities and counties for criminal justice purposes; and amending RCW 82.14.340.

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

Sec. 1. RCW 82.14.340 and 1993 sp.s. c 21 s 6 are each amended to read as follows:

The legislative authority of any county may fix and impose a sales and use tax in accordance with the terms of this chapter, provided that such sales and use tax is subject to repeal by referendum, using the procedures provided in RCW 82.14.036. The referendum procedure provided in RCW 82.14.036 is the exclusive method for subjecting any county sales and use tax ordinance or resolution to a referendum vote.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such county. The rate of tax shall equal one-tenth of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax).

When distributing moneys collected under this section, the state treasurer shall distribute ten percent of the moneys to the county in which the tax was collected. The remainder of the moneys collected under this section shall be distributed to the county and the cities within the county ratably based on population as last determined by the office of financial management. In making the distribution based on population, the county shall receive that proportion that the unincorporated population of the county bears to the total population of the county and each city shall receive that proportion that the city incorporated population bears to the total county population.

Moneys received from any tax imposed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

In the expenditure of funds for criminal justice purposes as provided in this section, cities and counties, or any combination thereof, are expressly authorized to participate in agreements, pursuant to chapter 39.34 RCW, to jointly expend funds for criminal justice purposes of mutual benefit. Such criminal justice purposes of mutual benefit include, but are not limited to, the construction, improvement, and expansion of jails, court facilities, and juvenile justice facilities.

Passed the Senate March 9, 1995.

Passed the House April 20, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 310

[Substitute House Bill 1336]

HIGH SCHOOL GRADUATES REQUIRING PRECOLLEGE CLASSES—NOTICE TO HIGH SCHOOLS

AN ACT Relating to accountability and collaboration in higher education and K-12 education; adding new sections to chapter 28B.10 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 28B.10 RCW to read as follows:

The legislature finds that some college students who have recently graduated from high school must immediately enroll in one or more precollege classes before they can proceed successfully through college. The legislature also finds that these students should have received basic skills in English, reading, spelling, grammar, and mathematics before graduating from high school. It is the intent of the legislature that colleges and universities provide information to school districts about recent graduates who enroll in precollege classes. It is also the intent of the legislature to encourage institutions of higher education and the common schools to work together to solve problems of common concern.

NEW SECTION. Sec. 2. By June 30, 1996, in consultation with the commission on student learning, the superintendent of public instruction, the state board of education, faculty, teachers from institutions of higher education and high schools, and others as appropriate, the higher education coordinating board shall adopt common definitions of remedial and precollege material and course work. The definitions adopted by the board shall be rigorous, challenging students to come to college well prepared to engage in college and university work, and shall be adopted by each institution of higher education as defined in RCW 28B.10.016.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.10 RCW to read as follows:

Beginning in 1997, by September 30th of each year, each state university, regional university, state college, and, for community colleges and technical colleges, the state board for community and technical colleges shall provide a report to the office of the superintendent of public instruction, the state board of education, and the commission on student learning under RCW 28A.630.885. The report shall contain the following information on students who, within three years of graduating from a Washington high school, enrolled the prior year in a state-supported precollege level class at the institution: (1) The number of such students enrolled in a precollege level class in mathematics, reading, grammar, spelling, writing, or English; (2) the types of precollege classes in which each student was enrolled; and (3) the name of the Washington high school from which each student graduated.

For students who enrolled in a precollege class within three years of graduating from a Washington high school, each institution of higher education shall also report to the Washington high school from which the student graduated. The annual report shall include information on the number of students from that high school enrolled in precollege classes, and the types of classes taken by the students.

Passed the House April 19, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor May 9, 1995.

Filed in Office of Secretary of State May 9, 1995.

CHAPTER 311

[Engrossed Substitute Senate Bill 5885]

CHILD WELFARE SERVICES—REVISED PROVISIONS

AN ACT Relating to services to families; amending RCW 74.14C.005, 74.14C.010, 74.14C.020, 74.14C.030, 74.14C.040, 74.14C.050, 74.14C.060, 74.14C.070, 13.04.030, 13.50.100, 74.15.020, 13.34.130, 13.34.145, 74.13.280, 74.15.120, 13.34.030, 13.34.233, 28A.225.330, and 13.34.110; reenacting and amending RCW 26.44.030; adding new sections to chapter 74.14C RCW; adding new sections to chapter 74.13 RCW; creating new sections; repealing RCW 74.14C.035; and prescribing penalties.

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

Sec. 1. RCW 74.14C.005 and 1992 c 214 s 1 are each amended to read as follows:

(1) ~~(It is the intent of the legislature to make available, within available funds, intensive services to children and families that are designed to prevent the unnecessary imminent placement of children in foster care, and designed to facilitate the reunification of the children with their families.)~~ The legislature believes that protecting the health and safety of children is paramount. The legislature recognizes that the number of children entering out-of-home care is increasing and that a number of children receive long-term foster care protection. Reasonable efforts by the department to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare system. It is intended

that providing up-front services decrease the number of children entering out-of-home care and have the effect of eventually lowering foster care expenditures and strengthening the family unit.

Within available funds, the legislature directs the department to focus child welfare services on protecting the child, strengthening families and, to the extent possible, providing necessary services in the family setting, while drawing upon the strengths of the family. The legislature intends services be locally based and offered as early as possible to avoid disruption to the family, out-of-home placement of the child, and entry into the dependency system. The legislature also intends that these services be used for those families whose children are returning to the home from out-of-home care. These services are known as family preservation services and intensive family preservation services and are characterized by the following values, beliefs, and goals:

(a) Safety of the child is always the first concern;

(b) Children need their families and should be raised by their own families whenever possible;

(c) Interventions should focus on family strengths and be responsive to the individual ((family)) family's cultural values and needs; ((and))

(d) Participation should be voluntary; and

(e) Improvement of family functioning is essential in order to promote the child's health, safety, and welfare and thereby allow the family to remain intact and allow children to remain at home.

(2) Subject to the availability of funds for such purposes, the legislature intends for ((family preservation)) these services to be made available to all eligible families on a state-wide basis through a phased-in process. Except as otherwise specified by statute, the department of social and health services shall have the authority and discretion to implement and expand ((family preservation)) these services ((according to a plan and time frame determined by the department)) as provided in this chapter. The department shall consult with the community public health and safety networks when assessing a community's resources and need for services.

(3) It is the legislature's intent that, within available funds, the department develop services in accordance with this chapter.

(4) Nothing in this chapter shall be construed to create an entitlement to services nor to create judicial authority to order the provision of ((family)) preservation services to any person or family ((where)) if the ((department has determined that such)) services are unavailable or unsuitable or that the child or family are not eligible for such services.

Sec. 2. RCW 74.14C.010 and 1992 c 214 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) "Department" means the department of social and health services.

~~(2) ("Family preservation services" means services that are delivered primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent foster care placement, and that have all of the characteristics delineated in RCW 74.14C.020.~~

~~(3) "Foster care" means placement of a child by the department or a licensed child placing agency in a home or facility licensed pursuant to chapter 74.15 RCW, or in a home or facility that is not required to be licensed pursuant to chapter 74.15 RCW.~~

(4)) "Family preservation services" means in-home or community-based services drawing on the strengths of the family and its individual members while addressing family needs to strengthen and keep the family together where possible and may include:

(a) Respite care of children to provide temporary relief for parents and other caregivers;

(b) Services designed to improve parenting skills with respect to such matters as child development, family budgeting, coping with stress, health, safety, and nutrition; and

(c) Services designed to promote the well-being of children and families, increase the strength and stability of families, increase parents' confidence and competence in their parenting abilities, promote a safe, stable, and supportive family environment for children, and otherwise enhance children's development.

Family preservation services shall have the characteristics delineated in RCW 74.14C.020 (2) and (3).

(3) "Imminent" means a decision has been made by the department that, without intensive family preservation services, a petition requesting the removal of a child from the family home will be immediately filed under chapter 13.32A or 13.34 RCW, or that a voluntary placement agreement will be immediately initiated.

(4) "Intensive family preservation services" means community-based services that are delivered primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent out-of-home placement, and that have all of the characteristics delineated in RCW 74.14C.020 (1) and (3).

(5) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(6) "Preservation services" means family preservation services and intensive family preservation services that consider the individual family's cultural values and needs.

Sec. 3. RCW 74.14C.020 and 1992 c 214 s 3 are each amended to read as follows:

(1) Intensive family preservation services shall have all of the following characteristics:

~~((1))~~ (a) Services are provided by specially trained ~~((caseworkers))~~ service providers who have received at least forty hours of training from recognized ~~((family preservation))~~ intensive in-home services experts. ~~((Caseworkers provide))~~ Service providers deliver the services in the family's home, and ~~((may provide some of the services in))~~ other ~~((natural))~~ environments of the family, such as their neighborhood or schools;

~~((2))~~ (b) Caseload size averages two families per ~~((caseworker))~~ service provider;

~~((3))~~ (c) The services to the family are provided by a single ~~((caseworker))~~ service provider, with backup ~~((caseworkers))~~ providers identified to provide assistance as necessary;

~~((4))~~ Caseworkers have the authority and discretion to spend funds, up to a maximum amount specified by the department, to help families obtain necessary food, shelter, or clothing, or to purchase other goods or services that will enhance the effectiveness of intervention;

~~((5))~~ (d) Services are available to the family within twenty-four hours following receipt of a referral to the program;

~~((6))~~ Services are available to the family twenty-four hours a day and seven days a week;

~~((7))~~ (e) Duration of service is limited to a maximum of forty days, unless the department authorizes an additional provision of service through an exception to policy;

~~((8))~~ Services assist the family to improve parental and household management competence and to solve practical problems that contribute to family stress so as to effect improved parental performance and enhanced functioning of the family unit; and

~~((9))~~ Services help families locate and utilize additional assistance, including, but not limited to, counseling and treatment services, housing, child care, education, job training, emergency cash grants, state and federally funded public assistance, and other basic support services).

(2) Family preservation services shall have all of the following characteristics:

(a) Services are delivered primarily in the family home or community;

(b) Services are committed to reinforcing the strengths of the family and its members and empowering the family to solve problems and become self-sufficient;

(c) Services are committed to providing support to families through community organizations including but not limited to school, church, cultural, ethnic, neighborhood, and business;

(d) Services are available to the family within forty-eight hours of referral unless an exception is noted in the file;

(e) Duration of service is limited to a maximum of ninety days, unless the department authorizes an additional provision of service through an exception to policy; and

(f) Caseload size no more than ten families per service provider, which can be adjusted according to exceptions defined by the department.

(3) Preservation services shall include the following characteristics:

(a) Services protect the child and strengthen the family;

(b) Service providers have the authority and discretion to spend funds, up to a maximum amount specified by the department, to help families obtain necessary food, shelter, or clothing, or to purchase other goods or services that will enhance the effectiveness of intervention;

(c) Services are available to the family twenty-four hours a day and seven days a week;

(d) Services enhance parenting skills, family and personal self-sufficiency, functioning of the family, and reduce stress on families; and

(e) Services help families locate and use additional assistance including, but not limited to, counseling and treatment services, housing, child care, education, job training, emergency cash grants, state and federally funded public assistance, and other basic support services.

Sec. 4. RCW 74.14C.030 and 1992 c 214 s 4 are each amended to read as follows:

(1) The department shall be the lead administrative agency for ~~((family))~~ preservation services and may receive funding from any source for the implementation or expansion of such services. The department shall:

(a) Provide coordination and planning with the advice of the community networks for the implementation and expansion of ~~((family))~~ preservation services; and

(b) Monitor and evaluate such services to determine whether the programs meet measurable standards specified by this chapter and the department.

(2) In carrying out the requirements ~~((of subsection (1)(a)))~~ of this section, the department shall consult ~~((and coordinate with at least one))~~ with qualified ~~((private, nonprofit agency))~~ agencies that ~~((has))~~ have demonstrated expertise and experience in ~~((family))~~ preservation services.

(3) The department may provide ~~((family))~~ preservation services directly and shall, within available funds, enter into outcome-based, competitive contracts with ~~((private, nonprofit))~~ social service agencies to provide preservation services, provided that such agencies meet measurable standards specified by this chapter and by the department. The standards shall include, but not be limited to, satisfactory performance in the following areas:

(a) The number of families appropriately connected to community resources;

(b) Avoidance of new referrals accepted by the department for child protective services or family reconciliation services within one year of the most recent case closure by the department;

(c) Consumer satisfaction;

(d) For reunification cases, reduction in the length of stay in out-of-home placement; and

(e) Reduction in the level of risk factors specified by the department.

(4)(a) The department shall not (~~continue direct provision of~~) provide intensive family preservation services unless it is demonstrated that provision of such services prevent(~~s foster care~~) out-of-home placement in at least seventy percent of the cases served for a period of at least six months following termination of services. (~~The department shall not renew a contract with a service provider unless the provider can~~) The department's caseworkers may only provide preservation services if there is no other qualified entity willing or able to do so.

(b) Contractors shall demonstrate that provision of intensive family preservation services prevent(~~s foster care~~) out-of-home placement in at least seventy percent of the cases served for a period of (~~at least~~) no less than six months following termination of services. The department may increase the period of time based on additional research and data. If the contractor fails to meet the seventy percent requirement the department may: (i) Review the ~~conditions that ma~~ have contributed to the failure to meet the standard and ~~renew the contract if the department determines: (A) The contractor is making progress to meet the standard; or (B) conditions unrelated to the provision of services, including case mix and severity of cases, contributed to the failure; or (ii) reopen the contract for other bids.~~

(c) The department shall cooperate with any person who has a contract under this section in providing data necessary to determine the amount of reduction in foster care. For the purposes of this subsection "prevent out-of-home placement" means that a child who has been a recipient of intensive family preservation services has not been placed outside of the home, other than for a single, temporary period of time not exceeding fourteen days.

NEW SECTION. Sec. 5. A new section is added to chapter 74.14C RCW to read as follows:

The department shall collect data regarding the rates at which intensive family preservation services prevent out-of-home placements over varying periods of time. The department shall make an initial report to the appropriate committees of the legislature of the data, and the proposed rules to implement this section, by December 1, 1995. The department shall present a report to the appropriate committees of the legislature on September 1st of each odd-numbered year, commencing on September 1, 1997.

Sec. 6. RCW 74.14C.040 and 1992 c 214 s 5 are each amended to read as follows:

(1) Intensive family preservation services may be provided to children and their families only when the department has determined that:

(a) The child has been placed (~~in foster care~~) out-of-home or is at (~~actual~~) imminent risk of (~~foster care~~) an out-of-home placement due to:

- (i) Child abuse or neglect;
 - (ii) A serious threat of substantial harm to the child's health, safety, or welfare; or
 - (iii) Family conflict; and
- (b) There are no other reasonably available services including family preservation services that will prevent (~~(foster care)~~) out-of-home placement of the child or make it possible to immediately return the child home.

(2) The department shall refer eligible families to intensive family preservation services on a twenty-four hour intake basis. The department need not refer otherwise eligible families, and intensive family preservation services need not be provided, if:

- (a) The services are not available in the community in which the family resides;
- (b) The services cannot be provided because the program is filled to capacity and there are no current service openings;
- (c) The family refuses the services;
- (d) The department, or the agency that is supervising the foster care placement, has developed a case plan that does not include reunification of the child and family; or
- (e) The department or the (~~(contracted)~~) service provider determines that the safety of a child, a family member, or persons providing the service would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of intensive family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or child.

NEW SECTION. **Sec. 7.** A new section is added to chapter 74.14C RCW to read as follows:

(1) Family preservation services may be provided to children and their families only when the department has determined that without intervention, the child faces a substantial likelihood of out-of-home placement due to:

- (a) Child abuse or neglect;
- (b) A serious threat of substantial harm to the child's health, safety, or welfare; or
- (c) Family conflict.

(2) The department need not refer otherwise eligible families and family preservation services need not be provided, if:

- (a) The services are not available in the community in which the family resides;
- (b) The services cannot be provided because the program is filled to capacity;
- (c) The family refuses the services; or

(d) The department or the service provider determines that the safety of a child, a family member, or persons providing the services would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or the child.

NEW SECTION. Sec. 8. A new section is added to chapter 74.14C RCW to read as follows:

Each department caseworker who refers a client for preservation services shall file a report with his or her direct supervisor stating the reasons for which the client was referred. The caseworker's supervisor shall verify in writing his or her belief that the family who is the subject of a referral for preservation services meets the eligibility criteria for services as provided in this chapter. The direct supervisor shall report monthly to the regional administrator on the provision of these services. The regional administrator shall report to the assistant secretary quarterly on the provision of these services for the entire region. The assistant secretary shall make a semiannual report to the secretary on the provision of these services on a state-wide basis.

Sec. 9. RCW 74.14C.050 and 1992 c 214 s 6 are each amended to read as follows:

~~((1) The department shall, within available funds, conduct a family preservation services study in at least one region within the state. In developing and conducting the project, the department shall consult and coordinate with at least one qualified private, nonprofit agency that has demonstrated expertise and experience in family preservation services. The purpose of the study is to))~~ By December 1, 1995, the department, with the assistance of the family policy council, two urban and two rural public health and safety networks to be chosen by the family policy council, and two private, nonprofit agencies with expertise and experience in preservation services shall submit to the legislature an implementation and evaluation plan that identifies:

~~((a) Develop))~~ (1) A valid and reliable process that can be used by caseworkers for accurately identifying clients who are eligible for intensive family preservation services and family preservation services. The plan shall recognize the due process rights of families that receive preservation services and recognize that family preservation services are not intended to be investigative for purposes of chapter 13.34 RCW;

~~((b) Collect))~~ (2) Necessary data ((on)) by which ((to base)) program success will be measured, projections of service needs, budget requests, and long-range planning;

~~((c) Develop))~~ (3) Regional and state-wide projections of service needs;

~~((d) Develop))~~ (4) A cost estimate for state-wide implementation and expansion of ((family)) preservation services on a ((state-wide)) phased-in basis beginning no later than July 1, 1996;

~~((e) Develop a long-range))~~ (5) A plan and time frame for ((expanding the availability)) phased-in implementation of ((family)) preservation services ((and ultimately making such services available to all eligible families)) on a state-wide basis to be accomplished as soon as possible but no later than July 1, 1997; ((and

~~(f) Collect))~~ (6) Data regarding the number of children in foster care, group care, ((and)) institutional placements, and other out-of-home placements due to medical needs, mental health needs, developmental disabilities, and juvenile offenses, and ((assess)) an assessment of the feasibility of ((expanding-family)) providing preservation services ((eligibility)) to include all of these children;

(7) Standards and outcome measures for the department when the department provides preservation services directly; and

(8) A process to assess outcome measures identified in RCW 74.14C.030 for contractors providing preservation services.

~~((2) The department shall prepare a report to the legislature that addresses the objectives set forth in subsection (1) of this section. The report shall address the feasibility of expanding and implementing family preservation services on a state-wide basis. The report is due January 1, 1993.))~~

Sec. 10. RCW 74.14C.060 and 1992 c 214 s 7 are each amended to read as follows:

For the purpose of providing ((family)) preservation services ~~((to children who would otherwise be removed from their homes,))~~ the department may:

(1) Solicit and use any available federal or private resources, which may include funds, in-kind resources, or volunteer services; and

(2) Use any available state resources, which may include in-kind resources or volunteer services.

Sec. 11. RCW 74.14C.070 and 1994 c 288 s 3 are each amended to read as follows:

~~((After July 1, 1993,))~~ The secretary of social and health services, or the secretary's regional designee, may transfer funds appropriated for foster care services to purchase ((family)) preservation services and other preventive services for children at imminent risk of ((foster care)) out-of-home placement or who face a substantial likelihood of out-of-home placement. This transfer may be made in those regions that lower foster care expenditures through efficient use of preservation services and permanency planning efforts. The transfer shall be equivalent to the amount of reduced foster care expenditures and shall be made in accordance with the provisions of this chapter and with the approval of the office of financial management. The secretary shall ((notify)) present an annual report to the ((appropriate committees of the senate and house of representatives of)) legislature regarding any transfers under this section. The secretary shall include caseload, expenditure, cost avoidance, identified improvements to the

~~((foster))~~ out-of-home care system, and outcome data related to the transfer in the ~~((notification))~~ report. The secretary shall also include in the report information regarding: (1) The percent of cases where a child is placed in out-of-home care after the provision of intensive family preservation services or family preservation services; (2) the average length of time before such child is placed out-of-home; (3) the average length of time such child is placed out-of-home; and (4) the number of families that refused the offer of either family preservation services or intensive family preservation services.

NEW SECTION. Sec. 12. A new section is added to chapter 74.14C RCW to read as follows:

(1) The department shall, within available funds, provide for ongoing training and consultation to department personnel to carry out their responsibilities effectively. Such training may:

(a) Include the family unit as the primary focus of service; identifying family member strengths; empowering families; child, adult, and family development; stress management; and may include parent training and family therapy techniques;

(b) Address intake and referral, assessment of risk, case assessment, matching clients to services, and service planning issues in the context of the home-delivered service model, including strategies for engaging family members, defusing violent situations, and communication and conflict resolution skills;

(c) Cover methods of helping families acquire the skills they need, including home management skills, life skills, parenting, child development, and the use of community resources;

(d) Address crisis intervention and other strategies for the management of depression, and suicidal, assaultive, and other high-risk behavior; and

(e) Address skills in collaborating with other disciplines and services in promoting the safety of children and other family members and promoting the preservation of the family.

(2) The department and the office of the administrator for the courts shall, within available funds, collaborate in providing training to judges, and others involved in the provision of services pursuant to this title, including service providers, on the function and use of preservation services.

NEW SECTION. Sec. 13. The initial contracts under RCW 74.14C.030(3) shall be executed not later than July 1996 and shall expire June 30, 1997. Subsequent contracts shall be for periods not to exceed twenty-four months.

NEW SECTION. Sec. 14. A new section is added to chapter 74.13 RCW to read as follows:

If the department is denied lawful access to records or information, or requested records or information is not provided in a timely manner, the department may petition the court for an order compelling disclosure.

(1) The petition shall be filed in the juvenile court for the county in which the record or information is located or the county in which the person who is the subject of the record or information resides. If the person who is the subject of the record or information is a party to or the subject of a pending proceeding under chapter 13.32A or 13.34 RCW, the petition shall be filed in such proceeding.

(2) Except as otherwise provided in this section, the persons from whom and about whom the record or information is sought shall be served with a summons and a petition at least seven calendar days prior to a hearing on the petition. The court may order disclosure upon ex parte application of the department, without prior notice to any person, if the court finds there is reason to believe access to the record or information is necessary to determine whether the child is in imminent danger and in need of immediate protection.

(3) The court shall grant the petition upon a showing that there is reason to believe that the record or information sought is necessary for the health, safety, or welfare of the child who is currently receiving child welfare services.

Sec. 15. RCW 13.04.030 and 1994 sp.s. c 7 s 519 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the juvenile courts in the several counties of this state, shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove alternative residential placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110; or

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic infraction, or violation has expired; or

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense or traffic infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction: PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile

court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

(iv) The juvenile is sixteen or seventeen years old and the alleged offense is: (A) A serious violent offense as defined in RCW 9.94A.030 committed on or after June 13, 1994; or (B) a violent offense as defined in RCW 9.94A.030 committed on or after June 13, 1994, and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately. In such a case the adult criminal court shall have exclusive original jurisdiction.

If the juvenile challenges the state's determination of the juvenile's criminal history, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the divertee has attained eighteen years of age; (~~and~~)

(h) Relating to court validation of a voluntary consent to (~~foster care~~) an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction; and

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to section 14 of this act.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) A juvenile subject to adult superior court jurisdiction under subsection (1)(e) (i) through (iv) of this section, who is detained pending trial, may be detained in a county detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.

Sec. 16. RCW 13.50.100 and 1990 c 246 s 9 are each amended to read as follows:

(1) This section governs records not covered by RCW 13.50.050.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the state-wide juvenile court information system.

(4) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported suspected child abuse or neglect.

(5) A juvenile or his or her parent denied access to any records following an agency determination under subsection (4) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsections (4) (a) and (b) of this section.

(6) The person making a motion under subsection (5) 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.

(7) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (4) of this section.

~~((8) Information concerning a juvenile or a juvenile's family contained in records covered by this section may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.))~~

Sec. 17. RCW 26.44.030 and 1993 c 412 s 13 and 1993 c 237 s 1 are each reenacted and amended to read as follows:

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, 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 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 shall use a risk assessment process when investigating child abuse and neglect referrals. 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 ~~((appropriate committees of the senate and house of representatives))~~ legislature on the effectiveness of the risk assessment process.

(14) Upon receipt of 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. 18. RCW 74.15.020 and 1994 c 273 s 21 are each amended to read as follows:

For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of social and health services;

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Family day-care provider" means a licensed day-care provider who regularly provides day care for not more than twelve children in the provider's home in the family living quarters;

(f) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(g) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

(4) "Agency" shall not include the following:

(a) ~~((Persons related by blood or marriage to the child, expectant mother, or persons with developmental disabilities in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first-cousin))~~ Persons related to the child, expectant mother, or person with developmental disabilities in the following ways:

(i) Any blood relative, including those of half blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection, even if a marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person does not engage in such activity on a regular basis, or where parents on a mutually cooperative basis exchange care of one another's children, or persons who have the care of an exchange student in their own home;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors;

(e) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(i) Licensed physicians or lawyers;

(j) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(k) Facilities approved and certified under chapter 71A.22 RCW;

(l) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(m) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(n) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(o) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(5) "Requirement" means any rule, regulation or standard of care to be maintained by an agency.

Sec. 19. RCW 13.34.130 and 1994 c 288 s 4 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030; after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with ~~((a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin))~~ a person who is related to the child as defined in RCW 74.15.020(4)(a) and with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been

offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

- (i) There is no parent or guardian available to care for such child;
- (ii) The parent, guardian, or legal custodian is not willing to take custody of the child;
- (iii) A manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or
- (iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds it is recommended by the supervising agency, that it is in the best interests of the child and that it is not reasonable to provide further services to reunify the family because the existence of aggravated circumstances make it unlikely that services will effectuate the return of the child to the child's parents in the near future. In determining whether aggravated circumstances exist, the court shall consider 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 and 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.

(3) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

- (a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal

custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

(4) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and

compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

(5) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

Sec. 20. RCW 13.34.145 and 1994 c 288 s 5 are each amended to read as follows:

(1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(a) Whenever a child is placed in out-of-home care pursuant to RCW 13.34.130, the agency that has custody of the child shall provide the court with a written permanency plan of care directed towards securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider.

(b) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2)(a) For children ten and under, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) For children over ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.

(3) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve or eighteen months, as provided in subsection (2) of this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree or guardianship order is entered, or the dependency is dismissed.

(4) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(5) At the permanency planning hearing, the court shall enter findings as required by RCW 13.34.130(5) and shall review the permanency plan prepared by the agency. If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280. If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate. In cases where the primary permanency planning goal has not yet been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. In all cases, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented;
or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(6) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.130(5), and the court shall determine the need for continued intervention.

(7) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(8) Except as otherwise provided in RCW 13.34.235, the status of all dependent children shall continue to be reviewed by the court at least once every six months, in accordance with RCW 13.34.130(5), until the dependency is dismissed. Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(9) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be

scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(10) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights.

(11) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

Sec. 21. RCW 74.13.280 and 1991 c 340 s 4 are each amended to read as follows:

(1) Except as provided in RCW 70.24.105, whenever a child is placed in out-of-home care by the department or a child-placing agency, the department or agency may share information about the child and the child's family with the care provider and may consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law.

(3) Nothing in this section shall be construed to limit the authority of the department or child-placing agencies to disclose client information or to maintain client confidentiality as provided by law.

Sec. 22. RCW 74.15.120 and 1979 c 141 s 361 are each amended to read as follows:

The secretary of social and health services may, at his or her discretion, issue ~~((a-provisional))~~ an initial license instead of a full license, to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license ~~((,-except that a-provisional))~~. An initial license shall not be granted to any foster-family home except as specified in this section. An initial license may be granted to a foster-family home only if the following three conditions are met: (1) The license is limited so that the licensee is authorized to provide care only to a specific child or specific children; (2) the department has determined that the licensee has a relationship with the child, and the child is comfortable with the licensee, or that it would otherwise be in the child's best interest to remain or be placed in the licensee's home; and (3) the initial license is issued for a period not to exceed ninety days.

Sec. 23. RCW 13.34.030 and 1994 c 288 s 1 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) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until the child returns home, an adoption decree or guardianship order is entered, or the dependency is dismissed, whichever occurs soonest. If the most recent date of removal occurred prior to the filing of a dependency petition under this chapter or after filing but prior to entry of a disposition order, such time periods shall be included when calculating the length of a child's current placement episode.

(3) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to RCW 13.34.232 for the limited purpose of assisting the court in the supervision of the dependency.

(4) "Dependent child" means any child:

(a) Who has been abandoned; that is, where the child's parent, guardian, or other custodian has ~~((evidenced))~~ expressed either by statement or conduct, ~~((a settled))~~ an intent to forego, for an extended period, ((a)) parental rights or ((a)) parental responsibilities despite an ability to do so. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon;

(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.

(5) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(6) "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.

(7) "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.

(8) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(9) "Preventive services" means ~~((family))~~ preservation services, as defined in ~~((RCW 74.14C.010))~~ chapter 74.14C RCW, and other reasonably available services capable of preventing the need for out-of-home placement while protecting the child.

Sec. 24. RCW 13.34.233 and 1994 c 288 s 8 are each amended to read as follows:

(1) Any party may request the court to modify or terminate a dependency guardianship order under RCW 13.34.150. Notice of any motion to modify or terminate the guardianship shall be served on all other parties, including any agency that was responsible for supervising the child's placement at the time the guardianship petition was filed. Notice shall in all cases be served upon the department of social and health services. If the department was not previously a party to the guardianship proceeding, the department shall nevertheless have the right to initiate a proceeding to modify or terminate a guardianship and the right to intervene at any stage of such a proceeding.

(2) The guardianship may be modified or terminated upon the motion of any party or the department if the court finds by a preponderance of the evidence that there has been a substantial change of circumstances subsequent to the establishment of the guardianship and that it is in the child's best interest to modify or terminate the guardianship. ~~((Unless all parties agree to entry of an order modifying or terminating the guardianship,))~~ The court shall hold a hearing on the motion before modifying or terminating a guardianship.

(3) Upon entry of an order terminating the guardianship, the dependency guardian shall not have any rights or responsibilities with respect to the child and shall not have legal standing to participate as a party in further dependency proceedings pertaining to the child. The court may allow the child's dependency guardian to attend dependency review proceedings pertaining to the child for the sole purpose of providing information about the child to the court.

(4) Upon entry of an order terminating the guardianship, the child shall remain dependent and the court shall either return the child to the child's parent or order the child into the custody, control, and care of the department of social and health services or a licensed child-placing agency for placement in a foster home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to such chapter. The court shall not place a child in the custody of the child's parent unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists and that such placement is in the child's best interest. The court shall thereafter conduct reviews as provided in RCW 13.34.130(5) and, where applicable, shall hold a permanency planning hearing in accordance with RCW 13.34.145.

Sec. 25. RCW 28A.225.330 and 1994 c 304 s 2 are each amended to read as follows:

(1) When enrolling a student who has attended school in another school district, the school enrolling the student may request the parent and the student to briefly indicate in writing whether or not the student has:

- (a) Any history of placement in special educational programs;
- (b) Any past, current, or pending disciplinary action;
- (c) Any history of violent behavior;
- (d) Any unpaid fines or fees imposed by other schools; and
- (e) Any health conditions affecting the student's educational needs.

(2) The school enrolling the student shall request the school the student previously attended to send the student's permanent record including records of disciplinary action. If the student has not paid a fine or fee under RCW 28A.635.060, the school may withhold the student's official transcript, but shall transmit information about the student's academic performance, special placement, and records of disciplinary action. If the official transcript is not sent due to unpaid fees or fines, the enrolling school shall notify both the student and parent or guardian that the official transcript will not be sent until the obligation is met, and failure to have an official transcript may result in exclusion from extracurricular activities or failure to graduate.

(3) If information is requested under subsection (2) of this section, the information shall be transmitted within two school days after receiving the request and the records shall be sent as soon as possible. Any school district or district employee who releases the information in compliance with this section is immune from civil liability for damages unless it is shown that the school district employee acted with gross negligence or in bad faith. The state board of education shall provide by rule for the discipline under chapter 28A.410 RCW of a school principal or other chief administrator of a public school building who fails to make a good faith effort to assure compliance with this subsection.

NEW SECTION. Sec. 26. A new section is added to chapter 74.13 RCW to read as follows:

(1) The department, or agency responsible for supervising a child in out-of-home care, shall conduct a social study whenever a child is placed in out-of-home care under the supervision of the department or other agency. The study shall be conducted prior to placement, or, if it is not feasible to conduct the study prior to placement due to the circumstances of the case, the study shall be conducted as soon as possible following placement.

(2) The social study shall include, but not be limited to, an assessment of the following factors:

- (a) The physical and emotional strengths and needs of the child;
- (b) The proximity of the child's placement to the child's family to aid reunification;
- (c) The possibility of placement with the child's relatives or extended family;
- (d) The racial, ethnic, cultural, and religious background of the child;
- (e) The least-restrictive, most family-like placement reasonably available and capable of meeting the child's needs; and
- (f) Compliance with RCW 13.34.260 regarding parental preferences for placement of their children.

Sec. 27. RCW 13.34.110 and 1993 c 412 s 7 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. Unless there is reasonable cause to believe the safety or welfare of the child would be jeopardized or efforts to reunite the parent and child would be hindered, the court shall direct the department to notify those adult persons who: (1) Are related by blood or marriage to the child in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, or aunt; (2) are known to the department as having been in contact with the family or child within the past twelve months; and (3) would be an appropriate placement for the child. The parties need not appear at the fact-finding or dispositional hearing if the parties, their attorneys, the guardian ad litem, and court-appointed special advocates, if any, are all in agreement. 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.

NEW SECTION. Sec. 28. RCW 74.14C.035 and 1992 c 214 s 8 are each repealed.

NEW SECTION. Sec. 29. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1995, in the omnibus appropriations act, this act is null and void.

Passed the Senate April 23, 1995.

Passed the House April 23, 1995.

Approved by the Governor May 10, 1995.

Filed in Office of Secretary of State May 10, 1995.

CHAPTER 312

[Engrossed Second Substitute Senate Bill 5439]

NONOFFENDER AT-RISK YOUTH AND THEIR FAMILIES

AN ACT Relating to revising procedures for nonoffender at-risk youth and their families; amending RCW 13.32A.010, 13.32A.030, 13.32A.040, 13.32A.050, 13.32A.060, 13.32A.070, 13.32A.090, 13.32A.120, 13.32A.130, 13.32A.140, 13.32A.150, 13.32A.160, 13.32A.170, 13.32A.175, 13.32A.177, 13.32A.180, 13.32A.190, 13.32A.192, 13.32A.194, 13.32A.196, 13.32A.250, 13.04.030, 13.04.040, 13.04.093, 43.43.510, 70.96A.090, 70.96A.095, 70.96A.140, 71.34.030, 71.34.050, 71.34.070, 74.13.031, 74.13.032, 74.13.033, 74.13.034, 74.13.035, 74.13.036, 28A.225.020, 28A.225.030, 36.18.020, 28A.225.060, 28A.225.090, 28A.225.110, 46.20.100, 82.14.300, and 82.14.320; adding new sections to chapter 13.32A RCW; adding new sections to chapter 46.20 RCW; adding new sections to chapter 70.96A RCW; adding new sections to chapter 71.34 RCW; adding a new section to chapter 74.13 RCW; adding new sections to chapter 28A.225 RCW; adding a new section to chapter 46.82 RCW; adding a new section to chapter 28A.600 RCW; creating new sections; repealing RCW 28A.225.040, 28A.225.050, 28A.225.070, 28A.225.100, 28A.225.120, 28A.225.130, and 28A.225.150; prescribing penalties; and providing effective dates.

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

Sec. 1. RCW 13.32A.010 and 1979 c 155 s 15 are each amended to read as follows:

The legislature finds that within any group of people there exists a need for guidelines for acceptable behavior and that, presumptively, the experience and maturity ((are)) of parents make them better ((qualifications for establishing)) qualified to establish guidelines beneficial to and protective of ((individual

~~members and the group as a whole than are youth and inexperience)) their children. The legislature further finds that it is the right and responsibility of adults to establish laws for the benefit and protection of the society; and that, in the same manner, the right and responsibility for establishing reasonable guidelines for the family unit belongs to the adults within that unit. Further, absent abuse or neglect, parents should have the right to exercise control over their children. The legislature reaffirms its position stated in RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that it should remain intact in the absence of compelling evidence to the contrary.~~

The legislature recognizes there is a need for services and assistance for parents and children who are in conflict. These conflicts are manifested by children who exhibit various behaviors including: Running away, substance abuse, serious acting out problems, mental health needs, and other behaviors that endanger themselves or others.

The legislature finds many parents do not know their rights regarding their adolescent children and law enforcement. Parents and courts feel they have insufficient legal recourse for the chronic runaway child who is endangering himself or herself through his or her behavior. The legislature further recognizes that for chronic runaways whose behavior puts them in serious danger of harming themselves or others, secure facilities must be provided to allow opportunities for assessment, treatment, and to assist parents and protect their children. The legislature intends to give tools to parents, courts, and law enforcement to keep families together and reunite them whenever possible.

The legislature recognizes that some children run away to protect themselves from abuse or neglect in their homes. Abused and neglected children should be dealt with pursuant to chapter 13.34 RCW and it is not the intent of the legislature to handle dependency matters under this chapter.

The legislature intends services offered under this chapter be on a voluntary basis whenever possible to children and their families and that the courts be used as a last resort.

The legislature intends to increase the safety of children through the preservation of families and the provision of assessment, treatment, and placement services for children in need of services and at-risk youth including services and assessments conducted under chapter 13.32A RCW and RCW 74.13.033. Within available funds, the legislature intends to provide these services through crisis residential centers in which children and youth may safely reside for a limited period of time. The time in residence shall be used to conduct an assessment of the needs of the children, youth, and their families. The assessments are necessary to identify appropriate services and placement options that will reduce the likelihood that children will place themselves in dangerous or life-threatening situations.

The legislature recognizes that crisis residential centers provide an opportunity for children to receive short-term necessary support and nurturing in

cases where there may be abuse or neglect. The legislature intends that center staff provide an atmosphere of concern, care, and respect for children in the center and their parents.

The legislature intends to provide for the protection of children who, through their behavior, are endangering themselves. The legislature intends to provide appropriate residential services, including secure facilities, to protect, stabilize, and treat children with serious problems. The legislature further intends to empower parents by providing them with the assistance they require to raise their children.

NEW SECTION. **Sec. 2.** This act may be known and cited as the "Becca bill."

Sec. 3. RCW 13.32A.030 and 1990 c 276 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) "At-risk youth" means a juvenile:

(a) Who is absent from home for at least seventy-two consecutive hours without consent of his or her parent;

(b) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person;

or

(c) Who has a substance abuse problem for which there are no pending criminal charges related to the substance abuse.

(2) "Child," "juvenile," and "youth" mean any unemancipated individual who is under the chronological age of eighteen years.

(3) "Child in need of services" means a juvenile:

(a) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or other person;

(b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours from the parent's home, a crisis residential center, an out-of-home placement, or a court-ordered placement on two or more separate occasions; and

(i) Has exhibited a serious substance abuse problem; or

(ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person; or

(c)(i) Who is in need of necessary services, including food, shelter, health care, clothing, educational, or services designed to maintain or reunite the family;

(ii) Who lacks access, or has declined, to utilize these services; and

(iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure.

(4) "Child in need of services petition" means a petition filed in juvenile court by a parent, child, or the department seeking adjudication of placement of the child.

(5) "Custodian" means the person or entity who has the legal right to the custody of the child.

(6) "Department" means the department of social and health services((+)

(2) "Child," "juvenile," and "youth" mean any individual who is under the chronological age of eighteen years;)).

((3)) (7) "Extended family member" means an adult who is a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child.

(8) "Guardian" means that person or agency that (a) has been appointed as the guardian of a child in a legal proceeding other than a proceeding under chapter 13.34 RCW, and (b) has the right to legal custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW.

(9) "Multidisciplinary team" means a group formed to provide assistance and support to a child who is an at-risk youth or a child in need of services and his or her parent. The team shall include the parent, a department case worker, a local government representative when authorized by the local government, and when appropriate, members from the mental health and substance abuse disciplines. The team may also include, but is not limited to, the following persons: Educators, law enforcement personnel, probation officers, employers, church persons, tribal members, therapists, medical personnel, social service providers, placement providers, and extended family members. The team members shall be volunteers who do not receive compensation while acting in a capacity as a team member, unless the member's employer chooses to provide compensation or the member is a state employee.

(10) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(11) "Parent" means the ((legal)) parent or parents who have the legal right to custody of the child. "Parent" includes custodian((+)) or guardian((+ of a child;)).

((4)) (12) "Secure facility" means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff.

(13) "Semi-secure facility" means any facility, including but not limited to crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away((+ PROVIDED; That such facility shall not be a secure institution or facility as defined by the

~~federal juvenile justice and delinquency prevention act of 1974 (P.L. 93-415; 42 U.S.C. Sec. 5634 et seq.) and regulations and clarifying instructions promulgated thereunder)). Pursuant to rules established by the department, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center. ((The facility administrator shall notify a parent and the appropriate law enforcement agency within four hours of all unauthorized leaves;~~

~~(5) "At risk youth" means an individual under the chronological age of eighteen years who:~~

~~(a) Is absent from home for more than seventy-two consecutive hours without consent of his or her parent;~~

~~(b) Is beyond the control of his or her parent such that the child's behavior substantially endangers the health, safety, or welfare of the child or any other person; or~~

~~(c) Has a serious substance abuse problem for which there are no pending criminal charges related to the substance abuse.))~~

(14) "Temporary out-of-home placement" means an out-of-home placement of not more than fourteen days ordered by the court at a fact-finding hearing on a child in need of services petition.

NEW SECTION. Sec. 4. A new section is added to chapter 13.32A RCW to read as follows:

Whenever a child in need of services petition is filed by a youth pursuant to RCW 13.32A.130, or the department pursuant to RCW 13.32A.150, the youth or the department shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

Sec. 5. RCW 13.32A.040 and 1994 c 304 s 3 are each amended to read as follows:

Families who are in conflict or who are experiencing problems with at-risk youth or a child who may be in need of services may request family reconciliation services from the department. The department may involve a local multidisciplinary team in its response in determining the services to be provided and in providing those services. Such services shall be provided to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the child or family and to maintain families intact wherever possible. Family reconciliation services shall be designed to develop skills and supports within families to resolve problems related to at-risk youth, children in

need of services, or family conflicts and may include but are not limited to referral to services for suicide prevention, psychiatric or other medical care, or psychological, mental health, drug or alcohol treatment, welfare, legal, educational, or other social services, as appropriate to the needs of the child and the family. ~~((Upon a referral by a school or other appropriate agency.))~~ Family reconciliation services may also include training in parenting, conflict management, and dispute resolution skills.

Sec. 6. RCW 13.32A.050 and 1994 sp.s. c 7 s 505 are each amended to read as follows:

(1) A law enforcement officer shall take a child into custody:

~~((1))~~ (a) If a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent; or

~~((2))~~ (b) If a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety or that a child is violating a local curfew ordinance; or

~~((3))~~ (c) If an agency legally charged with the supervision of a child has notified a law enforcement agency that the child has run away from placement; or

~~((4))~~ (d) If a law enforcement agency has been notified by the juvenile court that the court finds probable cause exists to believe that the child has violated a court placement order issued pursuant to chapter 13.32A RCW or that the court has issued an order for law enforcement pick-up of the child under this chapter.

(2) Law enforcement custody shall not extend beyond the amount of time reasonably necessary to transport the child to a destination authorized by law and to place the child at that destination.

~~(An officer who takes a child into custody under this section and places the child in a designated crisis residential center shall inform the department of such placement within twenty-four hours.)~~

(3) If a law enforcement officer takes a child into custody pursuant to either subsection (1)(a) or (b) of this section and transports the child to a crisis residential center, the officer shall, within twenty-four hours of delivering the child to the center, provide to the center a written report detailing the reasons the officer took the child into custody.

(4) If the law enforcement officer who initially takes the juvenile into custody or the staff of the crisis residential center have reasonable cause to believe that the child is absent from home because he or she is abused or neglected, a report shall be made immediately to the department.

(5) Nothing in this section affects the authority of any political subdivision to make regulations concerning the conduct of minors in public places by ordinance or other local law.

(6) If a law enforcement officer receives a report that causes the officer to have reasonable suspicion that a child is being harbored under RCW 13.32A.080

or for other reasons has a reasonable suspicion that a child is being (~~unlawful-~~
~~ly~~) harbored under RCW 13.32A.080, the officer shall remove the child from the custody of the person harboring the child and shall transport the child to one of the locations specified in RCW 13.32A.060.

(7) No child may be placed in a secure facility except as provided in this chapter.

Sec. 7. RCW 13.32A.060 and 1994 sp.s. c 7 s 506 are each amended to read as follows:

(1) An officer taking a child into custody under RCW 13.32A.050 (1) ~~(a)~~ or ~~((2))~~ (b) shall inform the child of the reason for such custody and shall either:

(a) Transport the child to his or her home or to a parent at his or her place of employment, if no parent is at home. The officer releasing a child into the custody of the parent shall inform the parent of the reason for the taking of the child into custody and shall inform the child and the parent of the nature and location of appropriate services available in their community. The parent may direct the officer to take the child to the home of an adult extended family member, responsible adult, or a licensed youth shelter. The officer releasing a child into the custody of an adult extended family member, responsible adult, or a licensed youth shelter shall inform the child and the person receiving the child of the nature and location of appropriate services available in the community; or

~~(b) After attempting to notify the parent, take the child to ((the home of an adult extended family member,)) a designated crisis residential ((center, or the home of a responsible adult after attempting to notify the parent or legal guardian)) center's secure facility or a center's semi-secure facility if a secure facility is full, not available, or not located within a reasonable distance:~~

(i) If the child expresses fear or distress at the prospect of being returned to his or her home which leads the officer to believe there is a possibility that the child is experiencing ~~((in the home))~~ some type of child abuse or neglect, as defined in RCW 26.44.020~~((, as now law or hereafter amended)); or~~

(ii) If it is not practical to transport the child to his or her home or place of the parent's employment; or

(iii) If there is no parent available to accept custody of the child.

~~((The officer releasing a child into the custody of an extended family member or a responsible adult shall inform the child and the extended family member or responsible adult of the nature and location of appropriate services available in the community.))~~

(2) An officer taking a child into custody under RCW 13.32A.050 ~~((3))~~ (1) ~~(c)~~ or ~~((4))~~ (d) shall inform the child of the reason for custody~~((and)).~~ An officer taking a child into custody under RCW 13.32A.050(1)(c) shall take the child to a designated crisis residential center's secure facility or, if not available or located within a reasonable distance, to a semi-secure facility within a crisis residential center, licensed by the department and established pursuant to chapter 74.13 RCW. ((However,)) An officer taking a child into custody under RCW

13.32A.050~~((4))~~ (1)(d) may place the child in a juvenile detention facility as provided in RCW 13.32A.065 or a secure facility. The department shall ensure that all ~~((the))~~ law enforcement authorities are informed on a regular basis as to the location of ~~((the))~~ all designated secure and semi-secure facilities within crisis residential center or centers in their ((judicial district)) jurisdiction, where children taken into custody under RCW 13.32A.050 may be taken.

~~((3)) "Extended family members" means a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child.))~~

Sec. 8. RCW 13.32A.070 and 1986 c 288 s 2 are each amended to read as follows:

~~(1) ((An officer taking a child into custody under RCW 13.32A.050 may, at his or her discretion, transport the child to the home of a responsible adult who is other than the child's parent where the officer reasonably believes that the child will be provided with adequate care and supervision and that the child will remain in the custody of such adult until such time as the department can bring about the child's return home or an alternative residential placement can be agreed to or determined pursuant to this chapter. An officer placing a child with a responsible adult other than his or her parent shall immediately notify the department's local community service office of this fact and of the reason for taking the child into custody.~~

~~(2))~~ A law enforcement officer acting in good faith pursuant to this chapter in failing to take a child into custody, in taking a child into custody, in placing a child in a crisis residential center, or in releasing a child to a person ~~((other than))~~ at the request of a parent ((of such child)) is immune from civil or criminal liability for such action.

~~((3))~~ ~~(2)~~ A person ~~((other than a parent of such child who receives))~~ with whom a child is placed pursuant to this chapter and who acts reasonably and in good faith ~~((in doing so))~~ is immune from civil or criminal liability for the act of receiving ~~((such))~~ the child. ~~((Such))~~ The immunity does not release ~~((such))~~ the person from liability under any other law ~~((including the laws regulating licensed child care and prohibiting child abuse))~~.

***NEW SECTION.** Sec. 9. A new section is added to chapter 13.32A RCW to read as follows:

The parents of a child placed in a crisis residential center shall contribute fifty dollars per day, for not more than five consecutive days, for the expense of the child's placement. However, the secretary may establish a payment schedule that requires a lesser payment based on a parent's ability to pay. The payment shall be made to the department. No child may be denied placement in, or removed from, a crisis residential center based solely on the income of the parent.

*Sec. 9 was vetoed. See message at end of chapter.

Sec. 10. RCW 13.32A.090 and 1990 c 276 s 6 are each amended to read as follows:

(1) The person in charge of a designated crisis residential center or the department (~~(pursuant to RCW 13.32A.070)~~) shall perform the duties under subsection (2) of this section:

(a) Upon admitting a child who has been brought to the center by a law enforcement officer under RCW 13.32A.060;

(b) Upon admitting a child who has run away from home or has requested admittance to the center;

(c) Upon learning from a person under RCW 13.32A.080(3) that the person is providing shelter to a child absent from home; or

(d) Upon learning that a child has been placed with a responsible adult pursuant to RCW (~~(13.32A.070)~~) 13.32A.060.

(2) When any of the circumstances under subsection (1) of this section are present, the person in charge of a center shall perform the following duties:

(a) Immediately notify the child's parent of the child's whereabouts, physical and emotional condition, and the circumstances surrounding his or her placement;

(b) Initially notify the parent that it is the paramount concern of the family reconciliation service personnel to achieve a reconciliation between the parent and child to reunify the family and inform the parent as to the procedures to be followed under this chapter;

(c) Inform the parent whether a referral to children's protective services has been made and, if so, inform the parent of the standard pursuant to RCW 26.44.020(12) governing child abuse and neglect in this state;

(d) Arrange transportation for the child to the residence of the parent, as soon as practicable, at the latter's expense to the extent of his or her ability to pay, with any unmet transportation expenses to be assumed by the department, when the child and his or her parent agrees to the child's return home or when the parent produces a copy of a court order entered under this chapter requiring the child to reside in the parent's home;

(e) Arrange transportation for the child to an (~~(alternative residential)~~) out-of-home placement which may include a licensed group care facility or foster family when agreed to by the child and parent at the latter's expense to the extent of his or her ability to pay, with any unmet transportation expenses assumed by the department;

(f) Immediately notify the department of the placement.

Sec. 11. RCW 13.32A.120 and 1990 c 276 s 7 are each amended to read as follows:

(1) Where either a child or the child's parent or the person or facility currently providing shelter to the child notifies the center that such individual or individuals cannot agree to the continuation of an (~~(alternative residential)~~) out-of-home placement arrived at pursuant to RCW 13.32A.090(2)(e), the center shall immediately contact the remaining party or parties to the agreement and

shall attempt to bring about the child's return home or to an alternative living arrangement agreeable to the child and the parent as soon as practicable.

(2) If a child and his or her parent cannot agree to an ~~((alternative residential))~~ out-of-home placement under RCW 13.32A.090(2)(e), either the child or parent may file with the juvenile court a petition to approve an ~~((alternative residential))~~ out-of-home placement or the parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth under this chapter.

(3) If a child and his or her parent cannot agree to the continuation of an ~~((alternative residential))~~ out-of-home placement arrived at under RCW 13.32A.090(2)(e), either the child or parent may file with the juvenile court a petition to approve an ~~((alternative residential))~~ out-of-home placement or the parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth under this chapter.

Sec. 12. RCW 13.32A.130 and 1994 sp.s. c 7 s 508 are each amended to read as follows:

(1) A child admitted to a secure facility within a crisis residential center ((under this chapter who is not returned to the home of his or her parent or who is not placed in an alternative residential placement under an agreement between the parent and child, shall, except as provided for by RCW 13.32A.140 and 13.32A.160(2), reside in the placement under the rules established for the center for a period not to exceed five consecutive days from the time of intake, except as otherwise provided by this chapter)) shall remain in the facility for not more than five consecutive days, but for at least twenty-four hours after admission.

(2)(a)(i) The facility administrator shall determine within twenty-four hours after a child's admission to a secure facility whether the child can be safely admitted to a semi-secure facility and may transfer the child to a semi-secure facility. The determination shall be based on: (A) The need for continued assessment, protection, and treatment of the child in a secure facility; and (B) the likelihood the child would remain at a semi-secure facility until his or her parents can take the child home or a petition can be filed under this title.

(ii) In making the determination the administrator shall include consideration of the following information if known: (A) A child's age and maturity; (B) the child's condition upon arrival at the center; C the circumstances that led to the child's being taken to the center; (D) whether the child's behavior endangers the health, safety, or welfare of the child or any other person; (E) the child's history of running away which has endangered the health, safety, and welfare of the child; and (F) the child's willingness to cooperate in conducting the assessment.

(b) If the administrator determines the child is unlikely to remain in a semi-secure facility, the administrator shall keep the child in the secure facility pursuant to this chapter and in order to provide for space for the child may transfer another child who has been in the facility for at least seventy-two hours to a semi-secure facility. The administrator shall not make a transfer of a child

after determining that the child who may be transferred is likely to remain at the semi-secure facility.

(c) A crisis residential center administrator is authorized to transfer a child to a crisis residential center in the area where the child's parents reside or where the child's lawfully prescribed residence is located.

(d) An administrator may transfer a child from a semi-secure facility to a secure facility whenever the administrator reasonably believes that the child is likely to leave the semi-secure facility and not return.

(3) If no parent is available or willing to remove the child during the five-day period, the department shall consider the filing of a petition under RCW 13.32A.140.

(4) The requirements of this section shall not apply to a child who is: (a) Returned to the home of his or her parent; (b) placed in a semi-secure facility within a crisis residential center pursuant to a temporary out-of-home placement order authorized under section 44 of this act; (c) placed in an out-of-home placement; or (d) is subject to a petition under section 25 of this act.

(5) Notwithstanding the provisions of subsection (1) of this section, the parents may remove the child at any time during the five-day period unless the staff of the crisis residential center has reasonable cause to believe that the child is absent from the home because he or she is abused or neglected or if allegations of abuse or neglect have been made against the parents. The department may remove the child whenever a dependency petition is filed under chapter 13.34 RCW.

(6) Crisis residential center staff shall make ~~((a-coerced))~~ reasonable efforts to protect the child and achieve a reconciliation of the family. If a reconciliation and voluntary return of the child has not been achieved within forty-eight hours from the time of intake, and if the person in charge of the center does not consider it likely that reconciliation will be achieved within the five-day period, then the person in charge shall inform the parent and child of ~~((+))~~ (a) the availability of counseling services; ~~((2))~~ (b) the right to file a child in need of services petition for an ~~((alternative residential))~~ out-of-home placement, the right of a parent to file an at-risk youth petition, and the right of the parent and child to obtain assistance in filing the petition; (c) the right to request the facility administrator or his or her designee to form a multidisciplinary team; and ~~((3))~~ (d) the right to request a review of any ~~((alternative residential))~~ out-of-home placement.

(7) At no time shall information regarding a parent's or child's rights be withheld ~~((if requested))~~. The department shall develop and distribute to all law enforcement agencies and to each crisis residential center administrator a written statement delineating the services and rights. Every officer taking a child into custody shall provide the child and his or her parent(s) or responsible adult with whom the child is placed with a copy of the statement. In addition, the administrator of the facility or his or her designee shall provide every resident and parent with a copy of the statement.

(8) A crisis residential center and its administrator or his or her designee acting in good faith in carrying out the provisions of this section are immune from criminal or civil liability for such actions.

NEW SECTION. Sec. 13. A new section is added to chapter 13.32A RCW to read as follows:

(1)(a) The administrator of a crisis residential center may convene a multidisciplinary team, which is to be locally based and administered, at the request of a child placed at the center or the child's parent.

(b) If the administrator has reasonable cause to believe that a child is a child in need of services and the parent is unavailable or unwilling to continue efforts to maintain the family structure, the administrator shall immediately convene a multidisciplinary team.

(c) A parent may disband a team twenty-four hours, excluding weekends and holidays, after receiving notice of formation of the team under (b) of this subsection unless a petition has been filed under RCW 13.32A.140. If a petition has been filed the parent may not disband the team until the hearing is held under section 20 of this act. The court may allow the team to continue if an out-of-home placement is ordered under section 20(3) of this act. Upon the filing of an at-risk youth or dependency petition the team shall cease to exist, unless the parent requests continuation of the team or unless the out-of-home placement was ordered under section 20(3) of this act.

(2) The secretary shall request participation of appropriate state agencies to assist in the coordination and delivery of services through the multidisciplinary teams. Those agencies that agree to participate shall provide the secretary all information necessary to facilitate forming a multidisciplinary team and the secretary shall provide this information to the administrator of each crisis residential center.

(3) The secretary shall designate within each region a department employee who shall have responsibility for coordination of the state response to a request for creation of a multidisciplinary team. The secretary shall advise the administrator of each crisis residential center of the name of the appropriate employee. Upon a request of the administrator to form a multidisciplinary team the employee shall provide a list of the agencies that have agreed to participate in the multidisciplinary team.

(4) The administrator shall also seek participation from representatives of mental health and drug and alcohol treatment providers as appropriate.

(5) A parent shall be advised of the request to form a multidisciplinary team and may select additional members of the multidisciplinary team. The parent or child may request any person or persons to participate including, but not limited to, educators, law enforcement personnel, court personnel, family therapists, licensed health care practitioners, social service providers, youth residential placement providers, other family members, church representatives, and members of their own community. The administrator shall assist in obtaining the prompt participation of persons requested by the parent or child.

(6) When an administrator of a crisis residential center requests the formation of a team, the state agencies must respond as soon as possible. The team shall have the authority to evaluate the juvenile, and family members, if appropriate and agreed to by the parent, and shall:

(a) With parental input, develop a plan of appropriate available services and assist the family in obtaining those services;

(b) Make a referral to the designated chemical dependency specialist or the county designated mental health professional, if appropriate;

(c) Recommend no further intervention because the juvenile and his or her family have resolved the problem causing the family conflict; or

(d) With the parent's consent, work with them to achieve reconciliation of the child and family.

NEW SECTION. Sec. 14. A new section is added to chapter 13.32A RCW to read as follows:

(1) The purpose of the multidisciplinary team is to assist in a coordinated referral of the family to available social and health-related services.

(2) At the first meeting of the multidisciplinary team, it shall choose a member to coordinate the team's efforts. The parent member of the multidisciplinary team must agree with the choice of coordinator. The team shall meet or communicate as often as necessary to assist the family.

(3) The coordinator of the multidisciplinary team may assist in filing a child in need of services petition when requested by the parent or child or an at-risk youth petition when requested by the parent. The multidisciplinary team shall have no standing as a party in any action under this title.

(4) If the administrator is unable to contact the child's parent, the multidisciplinary team may be used for assistance. If the parent has not been contacted within five days the administrator shall contact the department and request the case be reviewed for a dependency filing under chapter 13.34 RCW.

Sec. 15. RCW 13.32A.140 and 1990 c 276 s 9 are each amended to read as follows:

The department shall file a child in need of services petition to approve an ~~((alternative residential))~~ out-of-home placement on behalf of a child under any of the following sets of circumstances:

(1) The child has been admitted to a crisis residential center or has been placed with a responsible person other than his or her parent, and:

(a) The parent has been notified that the child was so admitted or placed;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No agreement between the parent and the child as to where the child shall live has been reached;

(d) No child in need of services petition ~~((requesting approval of an alternative residential placement))~~ has been filed by either the child or parent ~~((or legal custodian))~~;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

(2) The child has been admitted to a crisis residential center and:

(a) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such placement;

(b) The staff, after searching with due diligence, have been unable to contact the parent of such child; and

(c) The child has no suitable place to live other than the home of his or her parent.

(3) An agreement between parent and child made pursuant to RCW 13.32A.090(2)(e) or pursuant to RCW 13.32A.120(1) is no longer acceptable to parent or child, and:

(a) The party to whom the arrangement is no longer acceptable has so notified the department;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No new agreement between parent and child as to where the child shall live has been reached;

(d) No child in need of services petition (~~(requesting approval of an alternative residential placement)~~) has been filed by either the child or the parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

Under the circumstances of subsections (1), (2), or (3) of this section, the child shall remain in (~~a licensed child care facility, including but not limited to a crisis residential center, or in any other suitable residence to be determined by the department until~~) an (~~alternative residential~~) out-of-home placement until a child in need of services petition filed by the department on behalf of the child is reviewed by the juvenile court and is resolved by such court. The department may authorize emergency medical or dental care for a child placed under this section. The state, when the department files a child in need of services petition (~~for alternative residential placement~~) under this section, shall be represented as provided for in RCW 13.04.093.

If the department files a petition under this section, the department shall submit in a supporting affidavit any information provided under section 38 of this act.

Sec. 16. RCW 13.32A.150 and 1992 c 205 § 208 are each amended to read as follows:

(1) Except as otherwise provided in this (~~section~~) chapter, the juvenile court shall not accept the filing of (~~an alternative residential placement~~) a child in need of services petition by the child or the parents or the filing of an at-risk youth petition by the parent, unless verification is provided that a family assessment has been completed by the department. The family assessment provided

by the department shall involve the multidisciplinary team as provided in RCW 13.32A.040, if one exists. The family assessment or plan of services developed by the multidisciplinary team shall be aimed at family reconciliation, reunification, and avoidance of the out-of-home placement of the child. If the department is unable to complete an assessment within two working days following a request for assessment the child or the parents may proceed under subsection (2) of this section or the parent may proceed under ~~((subsection (3) of this))~~ section 25 of this act.

(2) A child or a child's parent may file with the juvenile court a child in need of services petition to approve an ~~((alternative residential))~~ out-of-home placement for the child ~~((outside the parent's home))~~. The department shall, when requested, assist either a parent or child in the filing of the petition. The petition shall only ask that the placement of a child outside the home of his or her parent be approved. The filing of a petition to approve ~~((such))~~ the placement is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent, and confers upon the court a special jurisdiction to approve or disapprove an ~~((alternative residential))~~ out-of-home placement.

~~((3))~~ A child's parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth. The department shall, when requested, assist the parent in filing the petition. The petition shall be filed in the county where the petitioning parent resides. The petition shall set forth the name, age, and residence of the child and the names and residence of the child's parents and shall allege that:

- ~~(a) The child is an at-risk youth as defined in this chapter;~~
- ~~(b) The petitioning parent has the right to legal custody of the child;~~
- ~~(c) Court intervention and supervision are necessary to assist the parent to maintain the care, custody, and control of the child; and~~
- ~~(d) Alternatives to court intervention have been attempted or there is good cause why such alternatives have not been attempted.~~

The petition shall set forth facts that support the allegations in this subsection and shall generally request relief available under this chapter. The petition need not specify any proposed disposition following adjudication of the petition. The filing of an at-risk youth petition is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent and confers upon the court the special jurisdiction to assist the parent in maintaining parental authority and responsibility for the child. An at-risk youth petition may not be filed if the court has approved an alternative residential placement petition regarding the child or if the child is the subject of a proceeding under chapter 13.34 RCW. A petition may be accepted for filing only if alternatives to court intervention have been attempted. Juvenile court personnel may screen all at-risk youth petitions and may refuse to allow the filing of any petition that lacks merit, fails to comply with the requirements of this section, or fails to allege sufficient facts in support of allegations in the petition.)

Sec. 17. RCW 13.32A.160 and 1990 c 276 s 11 are each amended to read as follows:

(1) When a proper child in need of services petition to approve an ~~((alternative residential))~~ out-of-home placement is filed under RCW 13.32A.120, 13.32A.140, or 13.32A.150 the juvenile court shall: (a) Schedule a ~~((date for a))~~ fact-finding hearing to be held within three judicial days; notify the parent, child, and the department of such date; (b) notify the parent of the right to be represented by counsel and, if indigent, to have counsel appointed for him or her by the court; (c) appoint legal counsel for the child; (d) inform the child and his or her parent of the legal consequences of the court approving or disapproving an ~~((alternative residential))~~ out-of-home placement petition; (e) notify the parents of their rights under this chapter and chapters 11.88, 13.34, 70.96A, and 71.34 RCW, including the right to file an at-risk youth petition, the right to submit on application for admission of their child to a treatment facility for alcohol, chemical dependency, or mental health treatment, and the right to file a guardianship petition; and ~~((e))~~ (f) notify all parties, including the department, of their right to present evidence at the fact-finding hearing.

(2) Upon filing of ~~((an alternative residential placement))~~ a child in need of services petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility licensed under chapter 74.15 RCW, or any other suitable residence to be determined by the department.

(3) If the child has been placed in a foster family home or group care facility under chapter 74.15 RCW, the child shall remain there, or in any other suitable residence as determined by the department, pending resolution of the ~~((alternative residential placement))~~ petition by the court. Any placement may be reviewed by the court within three ~~((court))~~ judicial days upon the request of the juvenile or the juvenile's parent.

Sec. 18. RCW 13.32A.170 and 1989 c 269 s 3 are each amended to read as follows:

(1) The court shall hold a fact-finding hearing to consider a proper child in need of services petition ~~((and may approve or deny alternative residential placement))~~, giving due weight to the intent of the legislature that families have the right to place reasonable restrictions and rules upon their children, appropriate to the individual child's developmental level. The court may appoint legal counsel and/or a guardian ad litem to represent the child and advise parents of their right to be represented by legal counsel. The court may approve an order stating that the child shall be placed in a residence other than the home of his or her parent only if it is established by a preponderance of the evidence, including a departmental recommendation for approval or dismissal of the petition, that:

(a) The petition is not capricious;

(b) The petitioner, if a ~~((parent or the))~~ child, has made a reasonable effort to resolve the conflict;

(c) The conflict (~~which exists~~) cannot be resolved by delivery of services to the family during continued placement of the child in the parental home;

(d) Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(e) A suitable out-of-home placement resource is available.

The court may not grant a petition filed by the child or the department if it is established that the petition is based only upon a dislike of reasonable rules or reasonable discipline established by the parent.

~~(2) (The order approving out-of-home placement shall direct the department to submit a disposition plan for a three-month placement of the child that is designed to reunite the family and resolve the family conflict. Such plan shall delineate any conditions or limitations on parental involvement. In making the order, the court shall further direct the department to make recommendations, as to which agency or person should have physical custody of the child, as to which parental powers should be awarded to such agency or person, and as to parental visitation rights. The court may direct the department to consider the cultural heritage of the child in making its recommendations.~~

~~(3) The hearing to consider the recommendations of the department for a three-month disposition plan shall be set no later than fourteen days after the approval of the court of a petition to approve alternative residential placement. Each party shall be notified of the time and place of such disposition hearing.~~

~~(4) If the court approves or denies a petition for an alternative residential placement, a written statement of the reasons shall be filed. If the court denies a petition requesting that a child be placed in a residence other than the home of his or her parent, the court shall enter an order requiring the child to remain at or return to the home of his or her parent.~~

~~(5) If the court denies the petition, the court shall impress upon the party filing the petition of the legislative intent to restrict the proceedings to situations where a family conflict is so great that it cannot be resolved by the provision of in-home services.~~

~~(6) A child who fails to comply with a court order directing that the child remain at or return to the home of his or her parent shall be subject to contempt proceedings, as provided in this chapter, but only if the noncompliance occurs within ninety calendar days after the day of the order.~~

~~(7) The department may request, and the juvenile court may grant, dismissal of an alternative residential placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:~~

~~(a) The child has been absent from court-approved placement for thirty consecutive days or more;~~

~~(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or~~

(e) ~~The department has exhausted all available and appropriate resources that would result in reunification-)~~)

Following the fact-finding hearing the court shall: (a) Enter a temporary out-of-home placement for a period not to exceed fourteen days pending approval of a disposition decision to be made under section 20(2) of this act; (b) approve an at-risk youth petition filed by the parents; (c) dismiss the petition; or (d) order the department to review the case to determine whether the case is appropriate for a dependency petition under chapter 13.34 RCW.

Sec. 19. RCW 13.32A.175 and 1987 c 435 s 13 are each amended to read as follows:

In any proceeding in which the court approves an (~~alternative residential~~) out-of-home placement, the court shall inquire into the ability of parents to contribute to the child's support. If the court finds that the parents are able to contribute to the support of the child, the court shall order them to make such support payments as the court deems equitable. The court may enforce such an order by execution or in any way in which a court of equity may enforce its orders. However, payments shall not be required of a parent who has both opposed the placement and continuously sought reconciliation with, and the return of, the child. All orders entered in a proceeding approving (~~alternative residential~~) out-of-home placement shall be in compliance with the provisions of RCW 26.23.050.

NEW SECTION. Sec. 20. A new section is added to chapter 13.32A RCW to read as follows:

(1) A hearing shall be held no later than fourteen days after the approval of the temporary out-of-home placement. The parents, child, and department shall be notified of the time and place of the hearing.

(2) At the commencement of the hearing the court shall advise the parents of their rights as set forth in RCW 13.32A.160(1)(e). If the court approves or denies a child in need of services petition, a written statement of the reasons shall be filed. At the conclusion of the hearing the court may: (a) Reunite the family and dismiss the petition; (b) approve an at-risk youth petition filed by the parents; (c) approve a voluntary out-of-home placement requested by the parents; (d) order any conditions set forth in RCW 13.32A.196(2); or (e) order the department to file a petition for dependency under chapter 13.34 RCW.

(3) At the conclusion of the hearing, if the court has not taken action under subsection (2) of this section it may, at the request of the child or department, enter an order for out-of-home placement for not more than ninety days. The court may only enter an order under this subsection if it finds by clear, cogent, and convincing evidence that: (a)(i) The order is in the best interest of the family; (ii) the parents have not requested an out-of-home placement; (iii) the parents have not exercised any other right listed in RCW 13.32A.160(1)(e); (iv) the child has made reasonable efforts to resolve the conflict; (v) the conflict cannot be resolved by delivery of services to the family during continued

placement of the child in the parental home; (vi) reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and (vii) a suitable out-of-home placement resource is available; (b)(i) the order is in the best interest of the child; and (ii) the parents are unavailable; or (c) the parent's actions cause an imminent threat to the child's health or safety. If the court has entered an order under this section, it may order any conditions set forth in RCW 13.32A.196(2).

(4) A child who fails to comply with a court order issued under this section shall be subject to contempt proceedings, as provided in this chapter, but only if the noncompliance occurs within one year after the entry of the order.

(5) The parents or the department may request, and the court may grant, dismissal of a placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

(6) The court shall dismiss a placement made under subsection (2)(c) of this section upon the request of the parents.

NEW SECTION. Sec. 21. A new section is added to chapter 13.32A RCW to read as follows:

The crisis residential center administrator shall notify parents and the appropriate law enforcement agency immediately as to any unauthorized leave from the center by a child placed at the center.

Sec. 22. RCW 13.32A.177 and 1988 c 275 s 14 are each amended to read as follows:

A determination of ~~((child))~~ support payments ordered under RCW 13.32A.175 shall be based upon ~~((the child support schedule and standards adopted under))~~ chapter 26.19 RCW ((26.19.040)).

Sec. 23. RCW 13.32A.180 and 1979 c 155 s 32 are each amended to read as follows:

(1) ~~((At a dispositional hearing held to consider the three month dispositional plan presented by the department the court shall consider all such recommendations included therein. The court, consistent with the stated goal of resolving the family conflict and reuniting the family, may modify such plan and shall make its dispositional order for))~~ If the court orders a three-month out-of-home placement for the child((-)), the court ((dispositional order)) shall specify the person or agency with whom the child shall be placed, those parental powers which will be temporarily awarded to such agency or person including but not limited to the right to authorize medical, dental, and optical treatment, and

parental visitation rights. Any agency or residence at which the child is placed must, at a minimum, comply with minimum standards for licensed family foster homes.

(2) No placement made pursuant to this section may be in a secure residence as defined by the federal Juvenile Justice and Delinquency Prevention Act of 1974 (~~(and clarifying interpretations and regulations promulgated thereunder)~~).

Sec. 24. RCW 13.32A.190 and 1989 c 269 s 5 are each amended to read as follows:

(1) Upon making a dispositional order under (~~RCW 13.32A.180~~) section 20 of this act, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel and/or a guardian ad litem to represent the child at the review hearing, advise parents of their right to be represented by legal counsel at the review hearing, and notify the parties of their rights to present evidence at the hearing. Where resources are available, the court shall encourage the parent and child to participate in (~~mediation~~) programs for reconciliation of their conflict.

(2) At the review hearing, the court shall approve or disapprove the continuation of the dispositional plan in accordance with (~~the goal of resolving the conflict and reuniting the family which governed the initial approval~~) this chapter. The court shall determine whether reasonable efforts have been made to reunify the family and make it possible for the child to return home. The court (~~is authorized to~~) shall discontinue the placement and order that the child return home if the court has reasonable grounds to believe that the parents have (~~displayed concerted~~) made reasonable efforts to (~~utilize services and~~) resolve the conflict and the court has reason to believe that the child's refusal to return home is capricious. If out-of-home placement is continued, the court may modify the dispositional plan.

(3) Out-of-home placement may not be continued past one hundred eighty days from the day the review hearing commenced. The court shall order (~~that~~) the child to return to the home of the parent at the expiration of the placement. If (~~continued~~) an out-of-home placement is disapproved prior to one hundred eighty days, the court shall enter an order requiring (~~that~~) the child to return to the home of the child's parent.

(4) The parents and the department may request, and the juvenile court may grant, dismissal of an (~~alternative residential~~) out-of-home placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

(5) The court shall terminate a placement made under this section upon the request of a parent unless the placement is made pursuant to section 20(3) of this act.

NEW SECTION. **Sec. 25.** A new section is added to chapter 13.32A RCW to read as follows:

(1) A child's parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth. The department shall, when requested, assist the parent in filing the petition. The petition shall be filed in the county where the petitioner resides. The petition shall set forth the name, age, and residence of the child and the names and residence of the child's parents and shall allege that:

- (a) The child is an at-risk youth as defined in this chapter;
- (b) The petitioner has the right to legal custody of the child;
- (c) Court intervention and supervision are necessary to assist the parent to maintain the care, custody, and control of the child; and
- (d) Alternatives to court intervention have been attempted or there is good cause why such alternatives have not been attempted.

(2) The petition shall set forth facts that support the allegations in this section and shall generally request relief available under this chapter. The petition need not specify any proposed disposition following adjudication of the petition. The filing of an at-risk youth petition is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent and confers upon the court the special jurisdiction to assist the parent in maintaining parental authority and responsibility for the child.

(3) A petition may not be filed if a dependency petition is pending under chapter 13.34 RCW.

Sec. 26. RCW 13.32A.192 and 1990 c 276 s 12 are each amended to read as follows:

(1) When a proper at-risk youth petition is filed by a child's parent under ~~((RCW 13.32A.120 or 13.32A.150))~~ this chapter, the juvenile court shall:

- (a) Schedule a fact-finding hearing to be held within three judicial days and notify the parent and the child of such date;
- (b) Notify the parent of the right to be represented by counsel at the parent's own expense;
- (c) Appoint legal counsel for the child;
- (d) Inform the child and his or her parent of the legal consequences of the court finding the child to be an at-risk youth; and
- (e) Notify the parent and the child of their rights to present evidence at the fact-finding hearing.

(2) Unless out-of-home placement of the child is otherwise authorized or required by law, the child shall reside in the home of his or her parent or in an ~~((alternative residential))~~ out-of-home placement requested by the parent or child and approved by the parent. ~~((Upon request by the parent, the court may enter~~

~~a court order requiring the child to reside in the home of his or her parent or an alternative residential placement approved by the parent.))~~

(3) If upon sworn written or oral declaration of the petitioning parent, the court has reason to believe that a child has willfully and knowingly violated a court order issued pursuant to subsection (2) of this section, the court may issue an order directing law enforcement to take the child into custody and place the child in a juvenile detention facility or in a secure facility within a crisis residential center ~~((licensed by the department and established pursuant to chapter 74.13 RCW))~~. If the child is placed in detention, a review shall be held as provided in RCW 13.32A.065.

(4) If both ~~((an alternative residential placement))~~ a child in need of services petition and an at-risk youth petition have been filed with regard to the same child, the petitions and proceedings shall be consolidated ~~((for purposes of fact-finding))~~ as an at-risk youth petition. Pending a fact-finding hearing regarding the petition, the child may be placed ~~((;))~~ in the parent's home or in an out-of-home placement if not already placed ~~((;))~~ in ~~((an alternative residential))~~ a temporary out-of-home placement ~~((as provided in RCW 13.32A.160 unless the court has previously entered an order requiring the child to reside in the home of his or her parent))~~. The child or the parent may request a review of the child's placement including a review of any court order requiring the child to reside in the parent's home. ~~((At the review the court, in its discretion, may order the child placed in the parent's home or in an alternative residential placement pending the hearing.))~~

Sec. 27. RCW 13.32A.194 and 1990 c 276 s 13 are each amended to read as follows:

(1) The court shall hold a fact-finding hearing to consider a proper at-risk youth petition. The court ~~((may))~~ shall grant the petition and enter an order finding the child to be an at-risk youth if the allegations in the petition are established by a preponderance of the evidence ~~((The court shall not enter such an order if the court has approved an alternative residential placement petition regarding the child or if))~~, unless the child is the subject of a proceeding under chapter 13.34 RCW. If the petition is granted, the court shall enter an order requiring the child to reside in the home of his or her parent or ~~((in an alternative residential placement approved by the parent))~~ in an out-of-home placement as provided in RCW 13.32A.192(2).

(2) The court may order the department to submit a dispositional plan if such a plan would assist the court in ordering a suitable disposition in the case. If the court orders the department to prepare a plan, the department shall provide copies of the plan to the parent, the child, and the court. If the parties or the court desire the department to be involved in any future proceedings or case plan development, the department shall be provided timely notification of all court hearings.

(3) A dispositional hearing shall be held no later than fourteen days after the court has granted an at-risk youth petition. Each party shall be notified of the time and date of the hearing.

(4) If the court grants or denies an at-risk youth petition, a statement of the written reasons shall be entered into the records. If the court denies an at-risk youth petition, the court shall verbally advise the parties that the child is required to remain within the care, custody, and control of his or her parent.

Sec. 28. RCW 13.32A.196 and 1991 c 364 s 14 are each amended to read as follows:

(1) At the dispositional hearing regarding an adjudicated at-risk youth, the court shall consider the recommendations of the parties and the recommendations of any dispositional plan submitted by the department. The court may enter a dispositional order that will assist the parent in maintaining the care, custody, and control of the child and assist the family to resolve family conflicts or problems.

(2) The court may set conditions of supervision for the child that include:

(a) Regular school attendance;

(b) Counseling;

(c) Participation in a substance abuse or mental health outpatient treatment program;

(d) Reporting on a regular basis to the department or any other designated person or agency; and

(e) Any other condition the court deems an appropriate condition of supervision including but not limited to: Employment, participation in an anger management program, and refraining from using alcohol or drugs.

(3) No dispositional order or condition of supervision ordered by a court pursuant to this section shall include involuntary commitment of a child for substance abuse or mental health treatment.

(4) The court may order the parent to participate in counseling services or any other services for the child requiring parental participation. The parent shall cooperate with the court-ordered case plan and shall take necessary steps to help implement the case plan. The parent shall be financially responsible for costs related to the court-ordered plan; however, this requirement shall not affect the eligibility of the parent or child for public assistance or other benefits to which the parent or child may otherwise be entitled.

(5) The parent may request dismissal of an at-risk youth proceeding or out-of-home placement at any time and upon such a request, the court shall dismiss the matter and cease court supervision of the child unless: (a) A contempt action is pending in the case; (b) a petition has been filed under RCW 13.32A.150 and a hearing has not yet been held under section 20 of this act; or (c) an order has been entered under section 20(3) of this act and the court retains jurisdiction under that subsection. The court may retain jurisdiction over the matter for the purpose of concluding any pending contempt proceedings, including the full satisfaction of any penalties imposed as a result of a contempt finding.

~~((5))~~ (6) The court may order the department to monitor compliance with the dispositional order, assist in coordinating the provision of court-ordered services, and submit reports at subsequent review hearings regarding the status of the case.

Sec. 29. RCW 13.32A.250 and 1990 c 276 s 16 are each amended to read as follows:

(1) In all (~~alternative residential placement~~) child in need of services proceedings and at-risk youth proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter. The court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section.

(2) Failure by a party to comply with an order entered under this chapter is a contempt of court as provided in chapter 7.21 RCW, subject to the limitations of subsection (~~(2)~~) (3) of this section.

(3) The court may impose a fine of up to one hundred dollars and (~~imprisonment~~) confinement for up to seven days, or both for contempt of court under this section.

(4) A child (~~imprisoned~~) placed in confinement for contempt under this section shall be (~~imprisoned~~) placed in confinement only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(5) A motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order adopted pursuant to this chapter.

***NEW SECTION.** *Sec. 30. A new section is added to chapter 13.32A RCW to read as follows:*

(1) This section contains special provisions to deal with the extraordinary dangers to children who are habitual runaways and to assist families to cope with the acute problems presented by such children.

(2) In disposition proceedings involving a child in need of services or an at-risk youth, the court may adopt the additional orders authorized under this section if it finds that the child involved in those proceedings is an habitual runaway. The court may include in its dispositional orders a requirement that the child be placed, for up to one hundred eighty consecutive days, in a facility that the court finds operates with a level of security adequate to prevent the child from leaving the facility without authorization and that will provide for the child's participation in a program designed to remedy his or her behavior difficulties. The court may not include this requirement unless, at the disposition hearing, it finds that the placement is clearly necessary in order to protect the child and that less-restrictive orders not requiring such placement would be inadequate to protect the child, given the child's age, maturity, propensity to run away from home, past exposure to serious risk when the child ran away from home, and possible future exposure to serious risk should the child run

away from home again. The orders shall also contain provisions providing for periodic court review of the placement, with the first review hearing conducted not more than thirty days after the date of the placement. Prior to each review hearing, the court shall advise the parents of their right to counsel and shall have appointed counsel to represent the child. At each review hearing the court shall review the orders to determine the progress of the child and whether the orders are still necessary for the protection of the child and whether a less-restrictive order of placement would be adequate. The court shall make such modifications in its orders as it finds necessary to protect the child. Unless the court provides to the contrary, review hearings of orders adopted under this section shall be held exclusively under this section and shall not be subject to the review provisions applicable under this chapter to disposition orders pertaining to a child in need of services or to at-risk youth.

(3) In disposition proceedings involving a child in need of services or an at-risk youth, the court may impose the following additional sanction on an habitual runaway for violation of any court order: The court may order the department of licensing to suspend the child's driver's license for ninety days.

(4) For purposes of this section, a child is an "habitual runaway" if the child, on three or more separate occasions within the twelve-month period before the commencement of the disposition proceedings, has been absent from the parent's home, or other residence lawfully prescribed for the child, for more than seventy-two consecutive hours without consent of the parent; or if the child during such twelve-month period has been absent from such home or residence without consent of the parent for more than thirty consecutive days.

(5) State funds may only be used to pay for placements under this section if, and to the extent that, such funds are appropriated to expressly pay for them.

*Sec. 30 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 31. A new section is added to chapter 46.20 RCW to read as follows:*

When the department of licensing is provided with a court order under section 30 of this act, the department shall suspend for ninety days all driving privileges of the juvenile identified in the order.

*Sec. 31 was vetoed. See message at end of chapter.

NEW SECTION. *Sec. 32. A new section is added to chapter 13.32A RCW to read as follows:*

No superior court may refuse to accept for filing a properly completed and presented child in need of services petition or an at-risk youth petition. To be properly presented, the petitioner shall verify that the family assessment required under RCW 13.32A.150 has been completed. In the event of an improper refusal that is appealed and reversed, the petitioner shall be awarded actual damages, costs, and attorneys' fees.

***NEW SECTION.** *Sec. 33. A new section is added to chapter 13.32A RCW to read as follows:*

(1) If any child under the age of ten has remained in out-of-home placement for a period exceeding nine months pursuant to a court order entered under this chapter, the court shall schedule a hearing to take place no later than one year after the initial placement. For a child over ten who has remained in out-of-home placement for a period exceeding fifteen months, the court shall schedule a hearing to take place no later than eighteen months after the initial placement.

(2) At the hearing the court shall determine whether the case should be referred to the department for the purpose of considering the filing of a dependency petition under chapter 13.34 RCW. In determining whether to refer the case to the department, the court shall determine whether it is in the child's or family's best interest to begin permanency planning as required under chapter 13.34 RCW.

(3) If the court refers the case to the department, it may identify one of the following outcomes as the primary goal for the referral and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; or, where age-appropriate, independent living or emancipation.

(4) If the court does not refer the case to the department under subsection (2) of this section, the court shall continue to review the case every six months, for as long as the child remains out-of-home under a court order.

**Sec. 33 was vetoed. See message at end of chapter.*

NEW SECTION. *Sec. 34. A new section is added to chapter 13.32A RCW to read as follows:*

(1) Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home, or other lawfully prescribed residence, without the permission of the parent, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department. The report may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from home without parental permission.

(c) "Parent" means any parent having legal custody of the child, whether individually or jointly.

***NEW SECTION.** *Sec. 35. A new section is added to chapter 13.32A RCW to read as follows:*

Violation of section 34 of this act is a misdemeanor.

*Sec. 35 was vetoed. See message at end of chapter.

NEW SECTION. *Sec. 36. A new section is added to chapter 13.32A RCW to read as follows:*

If a person provides the notice required in section 34 of this act, he or she is immune from liability for any cause of action arising from providing shelter to the child. The immunity shall not extend to acts of intentional misconduct or gross negligence by the person providing the shelter.

NEW SECTION. *Sec. 37. A new section is added to chapter 13.32A RCW to read as follows:*

Whenever a law enforcement agency receives a report from a parent that his or her child, or child over whom the parent has custody, has without permission of the parent left the home or residence lawfully prescribed for the child under circumstances where the parent believes that the child has run away from the home or the residence, the agency shall provide for placing information identifying the child in files under RCW 43.43.510.

***NEW SECTION.** *Sec. 38. A new section is added to chapter 13.32A RCW to read as follows:*

Upon the admissions of a child to a crisis residential center the administrator of the facility shall request the department to provide: (1) The name of any sibling of the child who has been: (a) Placed under the jurisdiction of the juvenile rehabilitation administration; or (b) subject to a proceeding under chapter 13.34 RCW; and (2) information regarding whether the child has run away multiple times.

The department shall provide the information as soon as feasible. The administrator may utilize the information in assessing the needs of the child but a petition filed under this chapter may not be based solely on this information.

*Sec. 38 was vetoed. See message at end of chapter.

Sec. 39. RCW 13.04.030 and 1994 sp.s. c 7 s 519 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the juvenile courts in the several counties of this state, shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove (~~(alternative residential)~~) out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110; or

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic infraction, or violation has expired; or

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense or traffic infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction: PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

(iv) The juvenile is sixteen or seventeen years old and the alleged offense is: (A) A serious violent offense as defined in RCW 9.94A.030 committed on or after June 13, 1994; or (B) a violent offense as defined in RCW 9.94A.030 committed on or after June 13, 1994, and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately. In such a case the adult criminal court shall have exclusive original jurisdiction.

If the juvenile challenges the state's determination of the juvenile's criminal history, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the divertee has attained eighteen years of age; and

(h) Relating to court validation of a voluntary consent to foster care placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) A juvenile subject to adult superior court jurisdiction under subsection (1)(e) (i) through (iv) of this section, who is detained pending trial, may be detained in a county detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.

Sec. 40. RCW 13.04.040 and 1983 c 191 s 14 are each amended to read as follows:

The administrator shall, in any county or judicial district in the state, appoint or designate one or more persons of good character to serve as probation counselors during the pleasure of the administrator. The probation counselor shall:

(1) Receive and examine referrals to the juvenile court for the purpose of considering the filing of a petition or information pursuant to chapter 13.32A or 13.34 RCW (~~13.34.040, 13.34.180, and~~) or RCW 13.40.070 (~~as now or hereafter amended, and RCW 13.32A.150~~);

(2) Make recommendations to the court regarding the need for continued detention or shelter care of a child unless otherwise provided in this title;

(3) Arrange and supervise diversion agreements as provided in RCW 13.40.080, (~~as now or hereafter amended,~~) and ensure that the requirements of such agreements are met except as otherwise provided in this title;

(4) Prepare predisposition studies as required in RCW 13.34.120 and 13.40.130, (~~as now or hereafter amended,~~) and be present at the disposition hearing to respond to questions regarding the predisposition study: PROVIDED, That such duties shall be performed by the department (~~of social and health services~~) for cases relating to dependency or to the termination of a parent and child relationship which is filed by the department (~~of social and health services~~) unless otherwise ordered by the court; and

(5) Supervise court orders of disposition to ensure that all requirements of the order are met.

All probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests of juveniles under their supervision for the violation of any state law or county or city ordinance.

The administrator may, in any county or judicial district in the state, appoint one or more persons who shall have charge of detention rooms or houses of detention.

The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the legislative

authority of the county, or in cases of joint counties, judicial districts of more than one county, or joint judicial districts such sums as shall be agreed upon by the legislative authorities of the counties affected, and such persons shall be paid as other county officers are paid.

The administrator is hereby authorized, and to the extent possible is encouraged to, contract with private agencies existing within the community for the provision of services to youthful offenders and youth who have entered into diversion agreements pursuant to RCW 13.40.080(~~(, as now or hereafter amended)~~)).

The administrator shall establish procedures for the collection of fines assessed under RCW 13.40.080 (2)(d) and (13) and for the payment of the fines into the county general fund.

Sec. 41. RCW 13.04.093 and 1991 c 363 s 11 are each amended to read as follows:

It shall be the duty of the prosecuting attorney to act in proceedings relating to the commission of a juvenile offense as provided in RCW 13.40.070 and 13.40.090 and in proceedings as provided in chapter 71.34 RCW. It shall be the duty of the prosecuting attorney to handle delinquency cases under chapter 13.24 RCW and it shall be the duty of the attorney general to handle dependency cases under chapter 13.24 RCW. It shall be the duty of the attorney general in contested cases brought by the department to present the evidence supporting any petition alleging dependency or seeking the termination of a parent and child relationship or any contested case filed under RCW 26.33.100 or approving or disapproving (~~(alternative-residential)~~) out-of-home placement: PROVIDED, That in each county with a population of less than two hundred ten thousand, the attorney general may contract with the prosecuting attorney of the county to perform (~~(said)~~) the duties of the attorney general under this section.

NEW SECTION. Sec. 42. The department of social and health services shall develop a plan for the development of an intensive treatment system for children whose behavior puts them at serious risk of harm to themselves or others. In developing this plan, the department shall work with service providers, community leaders, representatives of different cultural communities, businesses, educational institutions, community networks, and others to propose a continuum of services, including placement alternatives, for children who might otherwise be on the street.

In developing this plan, the department shall identify existing local and state services and barriers to those services for children. The plan for intensive treatment services, to the extent possible, shall build upon those existing resources.

The plan shall be presented to the legislature and the governor no later than December 1, 1995.

NEW SECTION. Sec. 43. A new section is added to chapter 13.32A RCW to read as follows:

Nothing in this chapter shall be construed to create an entitlement to services nor to create judicial authority to order the provision at public expense of services to any person or family where the department has determined that such services are unavailable or unsuitable or that the child or family are not eligible for such services.

NEW SECTION. Sec. 44. A new section is added to chapter 13.32A RCW to read as follows:

In approving a petition under this chapter, a child may be placed in a semi-secure crisis residential center as a temporary out-of-home placement under the following conditions: (1) No other suitable out-of-home placement is available; (2) space is available in the semi-secure crisis residential center; and (3) no child will be denied access for a five-day placement due to this placement.

Any child referred to a semi-secure crisis residential center by a law enforcement officer, the department, or himself or herself shall have priority over a temporary out-of-home placement in the facility. Any out-of-home placement order shall be subject to this priority, and the administrator of the semi-secure crisis residential center shall transfer the temporary out-of-home placement youth to a new out-of-home placement as necessary to ensure access for youth needing the semi-secure crisis residential center.

Sec. 45. RCW 43.43.510 and 1967 ex.s. c 27 s 2 are each amended to read as follows:

As soon as is practical and feasible there shall be established, by means of data processing, files listing stolen and wanted vehicles, outstanding warrants, identifying children whose parents, custodians, or legal guardians have reported as having run away from home or the custodial residence, identifiable stolen property, and such other files as may be of general assistance to law enforcement agencies.

Sec. 46. RCW 70.96A.090 and 1990 c 151 s 5 are each amended to read as follows:

(1) The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.

(7) The department shall maintain and periodically publish a current list of approved treatment programs.

(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment programs, and its certification revoked or suspended.

(9) The department shall use the data provided in subsection (8) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation shall be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

Sec. 47. RCW 70.96A.095 and 1991 c 364 s 9 are each amended to read as follows:

(1) Any person ((fourteen)) thirteen years of age or older may give consent for himself or herself to the furnishing of counseling, care, treatment, or rehabilitation by a treatment program or by any person. Consent of the parent, parents, or legal guardian of a person less than eighteen years of age is not necessary to authorize the care, except that the person shall not become a resident of the treatment program without such permission except as provided in

RCW 70.96A.120 or 70.96A.140. The parent, parents, or legal guardian of a person less than eighteen years of age are not liable for payment of care for such persons pursuant to this chapter, unless they have joined in the consent to the counseling, care, treatment, or rehabilitation.

(2) The parent of any minor child may apply to an approved treatment program for the admission of his or her minor child for purposes authorized in this chapter. The consent of the minor child shall not be required for the application or admission. The approved treatment program shall accept the application and evaluate the child for admission. The ability of a parent to apply to an approved treatment program for the involuntary admission of his or her minor child does not create a right to obtain or benefit from an funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor.

NEW SECTION. Sec. 48. A new section is added to chapter 70.96A RCW to read as follows:

(1) The admission of any child under RCW 70.96A.095 may be reviewed by the county-designated chemical dependency specialist between fifteen and thirty days following admission. The county-designated chemical dependency specialist may undertake the review on his or her own initiative and may seek reimbursement from the parents, their insurance, or medicaid for the expense of the review.

(2) The department shall ensure a review is conducted no later than sixty days following admission to determine whether it is medically appropriate to continue the child's treatment on an inpatient basis. The department may, subject to available funds, contract with a county for the conduct of the review conducted under this subsection and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

If the county-designated chemical dependency specialist determines that continued inpatient treatment of the child is no longer medically appropriate, the specialist shall notify the facility, the child, the child's parents, and the department of the finding within twenty-four hours of the determination.

(3) For purposes of eligibility for medical assistance under chapter 74.09 RCW, children in inpatient mental health or chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the child has been assessed by the department of social and health services or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the child's parents are found to not be exercising responsibility for care and control of the child. Payment for such care by the department of social and health services shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department.

Sec. 49. RCW 70.96A.140 and 1993 c 362 s 1 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 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 a petition for commitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the designated chemical dependency specialist's report.

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 a chemical dependency program is available and deemed appropriate, the petition shall allege that: The person is chemically dependent and is incapacitated by alcohol or drug addiction, or that the person has twice before in the preceding twelve months been admitted for detoxification or chemical dependency treatment pursuant to RCW 70.96A.110, and is in need of a more sustained treatment program, or that the person is 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 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 petition for recommitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the treatment progress report.

If a person has been committed because he or she is 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 a chemically dependent person committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, 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 a chemically dependent person committed on the grounds of the need of treatment and incapacity, 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. 50.** *A new section is added to chapter 70.96A RCW to read as follows:*

Any provider of treatment in an approved treatment program who provides treatment to a minor under RCW 70.96A.095(1) must provide notice of the request for treatment to the minor's parents. The notice must be made within forty-eight hours of the request for treatment, excluding Saturdays, Sundays, and holidays, and must contain the same information as required under RCW 71.34.030(2)(b).

*Sec. 50 was vetoed. See message at end of chapter.

***NEW SECTION. Sec. 51.** *A new section is added to chapter 70.96A RCW to read as follows:*

Nothing in this chapter authorizes school district personnel to refer minors to any treatment program or treatment provider without providing notice of the referral to the parent, parents, or guardians.

*Sec. 51 was vetoed. See message at end of chapter.

Sec. 52. RCW 71.34.030 and 1985 c 354 s 3 are each amended to read as follows:

(1) Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization is required for outpatient treatment of a minor under the age of thirteen.

(2) When in the judgment of the professional person in charge of an evaluation and treatment facility there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility in accordance with the following requirements:

(a) ~~((A minor under thirteen years of age may only be admitted on the application of the minor's parent.~~

~~((b))) A minor ((thirteen years or older)) may be voluntarily admitted by application of the parent. ((Such application must be accompanied by the written consent, knowingly and voluntarily given, of the minor.)) The consent of the minor is not required for the minor to be evaluated and admitted as appropriate.~~

~~((e))) (b) A minor thirteen years or older may, with the concurrence of the professional person in charge of an evaluation and treatment facility, admit himself or herself without parental consent to the evaluation and treatment facility, provided that notice is given by the facility to the minor's parent in accordance with the following requirements:~~

~~((i)) Notice of the minor's admission shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent that the minor has been admitted to inpatient treatment; the~~

location and telephone number of the facility providing such treatment; and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent.

(ii) The minor shall be released to the parent at the parent's request for release unless the facility files a petition with the superior court of the county in which treatment is being provided setting forth the basis for the facility's belief that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety.

(iii) The petition shall be signed by the professional person in charge of the facility or that person's designee.

(iv) The parent may apply to the court for separate counsel to represent the parent if the parent cannot afford counsel.

(v) There shall be a hearing on the petition, which shall be held within three judicial days from the filing of the petition.

(vi) The hearing shall be conducted by a judge, court commissioner, or licensed attorney designated by the superior court as a hearing officer for such hearing. The hearing may be held at the treatment facility.

(vii) At such hearing, the facility must demonstrate by a preponderance of the evidence presented at the hearing that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety. The hearing shall not be conducted using the rules of evidence, and the admission or exclusion of evidence sought to be presented shall be within the exercise of sound discretion by the judicial officer conducting the hearing.

~~((d))~~ (c) Written renewal of voluntary consent must be obtained from the applicant ~~((and the minor thirteen years or older))~~ no less than once every twelve months.

~~((e))~~ (d) The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days.

(3) A notice of intent to leave shall result in the following:

(a) Any minor under the age of thirteen must be discharged immediately upon written request of the parent.

(b) Any minor thirteen years or older voluntarily admitted may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(c) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(d) The professional person in charge of the evaluation and treatment facility shall discharge the minor, thirteen years or older, from the facility within twenty-four hours after receipt of the minor's notice of intent to leave, unless the county-designated mental health professional or a parent or legal guardian files a petition or an application for initial detention within the time prescribed by this chapter.

(4) The ability of a parent to apply to a certified evaluation and treatment program for the involuntary admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor.

Sec. 53. RCW 71.34.050 and 1985 c 354 s 5 are each amended to read as follows:

(1) When a county-designated mental health professional receives information that a minor, thirteen years or older, as a result of a mental disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the county-designated mental health professional may take the minor, or cause the minor to be taken, into custody and transported to an evaluation and treatment facility providing inpatient treatment.

If the minor is not taken into custody for evaluation and treatment, the parent who has custody of the minor may seek review of that decision made by the county designated mental health professional in court. The parent shall file notice with the court and provide a copy of the county designated mental health professional's report or notes.

(2) Within twelve hours of the minor's arrival at the evaluation and treatment facility, the county-designated mental health professional shall serve on the minor a copy of the petition for initial detention, notice of initial detention, and statement of rights. The county-designated mental health professional shall file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of rights along with an affidavit of service. The county-designated mental health professional shall commence service of the petition for initial detention and notice of the initial detention on the minor's parent and the minor's attorney as soon as possible following the initial detention.

(3) At the time of initial detention, the county-designated mental health professional shall advise the minor both orally and in writing that if admitted to the evaluation and treatment facility for inpatient treatment, a commitment hearing shall be held within seventy-two hours of the minor's provisional acceptance to determine whether probable cause exists to commit the minor for further mental health treatment.

The minor shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the minor is indigent.

(4) Whenever the county designated mental health professional petitions for detention of a minor under this chapter, an evaluation and treatment facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. Within twenty-four hours of

the minor's arrival, the facility must evaluate the minor's condition and either admit or release the minor in accordance with this chapter.

(5) If a minor is not approved for admission by the inpatient evaluation and treatment facility, the facility shall make such recommendations and referrals for further care and treatment of the minor as necessary.

Sec. 54. RCW 71.34.070 and 1985 c 354 s 7 are each amended to read as follows:

(1) The professional person in charge of an evaluation and treatment facility where a minor has been admitted involuntarily for the initial seventy-two hour treatment period under this chapter may petition to have a minor committed to an evaluation and treatment facility for fourteen-day diagnosis, evaluation, and treatment.

If the professional person in charge of the treatment and evaluation facility does not petition to have the minor committed, the parent who has custody of the minor may seek review of that decision in court. The parent shall file notice with the court and provide a copy of the treatment and evaluation facility's report.

(2) A petition for commitment of a minor under this section shall be filed with the superior court in the county where the minor is residing or being detained.

(a) A petition for a fourteen-day commitment shall be signed either by two physicians or by one physician and a mental health professional who have examined the minor and shall contain the following:

- (i) The name and address of the petitioner;
- (ii) The name of the minor alleged to meet the criteria for fourteen-day commitment;
- (iii) The name, telephone number, and address if known of every person believed by the petitioner to be legally responsible for the minor;
- (iv) A statement that the petitioner has examined the minor and finds that the minor's condition meets required criteria for fourteen-day commitment and the supporting facts therefor;
- (v) A statement that the minor has been advised of the need for voluntary treatment but has been unwilling or unable to consent to necessary treatment;
- (vi) A statement recommending the appropriate facility or facilities to provide the necessary treatment; and
- (vii) A statement concerning whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(b) A copy of the petition shall be personally delivered to the minor by the petitioner or petitioner's designee. A copy of the petition shall be sent to the minor's attorney and the minor's parent.

***NEW SECTION.** *Sec. 55. A new section is added to chapter 71.34 RCW to read as follows:*

Any provider of treatment at an evaluation and treatment facility who provides treatment to a minor under RCW 71.34.030(1) must provide notice of the request for treatment to the minor's parents. The notice must be made within forty-eight hours of the request for treatment, excluding Saturdays, Sundays, and holidays, and must contain the same information as required under RCW 71.34.030(2)(b).

*Sec. 55 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 56. A new section is added to chapter 71.34 RCW to read as follows:

(1) The admission of any child under RCW 71.34.030 may be reviewed by the county-designated mental health professional between fifteen and thirty days following admission. The county-designated mental health professional may undertake the review on his or her own initiative and may seek reimbursement from the parents, their insurance, or medicaid for the expense of the review.

(2) The department shall ensure a review is conducted no later than sixty days following admission to determine whether it is medically appropriate to continue the child's treatment on an inpatient basis. The department may, subject to available funds, contract with a county for the conduct of the review conducted under this subsection and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

If the county-designated mental health professional determines that continued inpatient treatment of the child is no longer medically appropriate, the professional shall notify the facility, the child, the child's parents, and the department of the finding within twenty-four hours of the determination.

(3) For purposes of eligibility for medical assistance under chapter 74.09 RCW, children in inpatient mental health or chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the child has been assessed by the department of social and health services or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the child's parents are found to not be exercising responsibility for care and control of the child. Payment for such care by the department of social and health services shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department.

***NEW SECTION. Sec. 57.** A new section is added to chapter 71.34 RCW to read as follows:

Nothing in this chapter authorizes school district personnel to refer minors to any evaluation and treatment program or mental health professional without providing notice of the referral to the minor's parent.

*Sec. 57 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 58. A new section is added to chapter 71.34 RCW to read as follows:

The department shall randomly select and review the information on children who are admitted to in-patient treatment on application of the child's parent. The review shall determine whether the children reviewed were appropriately admitted into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

**Sec. 59. RCW 74.13.031 and 1990 c 146 s 9 are each amended to read as follows:*

The department shall have the duty to provide child welfare services as defined in RCW 74.13.020, and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Develop a recruiting plan for recruiting an adequate number of prospective adoptive and foster homes, both regular and specialized, ~~((&-))~~ including homes for children of ethnic minority, ~~((including))~~ Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, and annually submit the plan for review to the ~~((house and senate committees on social and health services))~~ legislature. The plan shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of neglect, abuse, or abandonment of children, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency ~~((PROVIDED, That an))~~. No investigation is ~~((not))~~ required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If ~~((the))~~ an investigation reveals that a crime may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report delineating the results to the ~~((house and senate committees on social and health services))~~ legislature.

(6) Have authority to accept custody of children from parents and ~~((to accept custody of children from))~~ juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children(~~(?)~~) and (~~shall follow in general the policy of using~~) use properly approved private agency services for the (~~actual~~) care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, day care, licensing of child care agencies, adoption, and related services (~~related thereto~~). At least one-third of the membership shall be (~~composed of~~) child care providers, and at least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order(~~(?) and~~). The purchase of such care (~~shall be~~) is subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section, all services to be provided by the department of social and health services under subsections (4)(~~?)~~ and (6)(~~and (?)~~) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

*Sec. 59 was vetoed. See message at end of chapter.

Sec. 60. RCW 74.13.032 and 1979 c 155 s 78 are each amended to read as follows:

(1) The department shall establish, by contracts with private vendors, (~~not less than eight~~) regional crisis residential centers(~~(?) which~~) with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department(~~(?) Each regional center~~) and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children. (~~The staff shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles, and carry out the responsibilities outlined in RCW 13.32A.090.~~)

(2) Within available funds appropriated for this purpose, the department shall establish, by contracts with private vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(3) The department shall, in addition to the ((regional)) facilities established under subsections (1) and (2) of this section, establish ((not less than thirty)) additional crisis residential centers pursuant to contract with licensed private group care ((or specialized foster home)) facilities.

(4) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

(5) The secure facilities located within crisis residential ((facilities)) centers shall be operated ((as semi-secure facilities)) to conform with the definition in RCW 13.32A.030. The facilities shall have an average of no more than three adult staff members to every eight children. The staffing ratio shall continue to ensure the safety of the children.

(6) A center with secure facilities created under this section may not be located within, or on the same grounds as, other secure structures including jails, juvenile detention facilities operated by the state, or units of local government. However, the secretary may, following consultation with the appropriate county legislative authority, make a written finding that location of a center with secure facilities on the same grounds as another secure structure is the only practical location for a secure facility. Upon the written finding a secure facility may be located on the same grounds as the secure structure. gWhere a center is located in or adjacent to a secure juvenile detention facility, the center shall be operated in a manner that prevents in-person contact between the residents of the center and the persons held in such facility.

NEW SECTION. Sec. 61. A new section is added to chapter 74.13 RCW to read as follows:

No contract may provide reimbursement or compensation to a crisis residential center's secure facility for any service delivered or provided to a resident child after five consecutive days of residence.

Sec. 62. RCW 74.13.033 and 1992 c 205 s 213 are each amended to read as follows:

(1) If a resident of a center becomes by his or her behavior disruptive to the facility's program, such resident may be immediately removed to a separate area within the facility and counseled on an individual basis until such time as the child regains his or her composure. The department may set rules and

regulations establishing additional procedures for dealing with severely disruptive children on the premises(~~(, which procedures are consistent with the federal juvenile justice and delinquency prevention act of 1974 and regulations and clarifying instructions promulgated thereunder. Nothing in this section shall prohibit a center from referring any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency medical evaluation and possible care, for evaluation pursuant to chapter 71.34 RCW or to a mental health professional pursuant to chapter 71.05 RCW whenever such action is deemed appropriate and consistent with law))~~).

(2) When the juvenile resides in this facility, all services deemed necessary to the juvenile's reentry to normal family life shall be made available to the juvenile as required by chapter 13.32A RCW. In assessing the child and providing these services, the facility staff shall:

(a) Interview the juvenile as soon as possible;

(b) Contact the juvenile's parents and arrange for a counseling interview with the juvenile and his or her parents as soon as possible;

(c) Conduct counseling interviews with the juvenile and his or her parents, to the end that resolution of the child/parent conflict is attained and the child is returned home as soon as possible; (~~and~~)

(d) Provide additional crisis counseling as needed, to the end that placement of the child in the crisis residential center will be required for the shortest time possible, but not to exceed five consecutive days; and

(e) Convene, when appropriate, a multidisciplinary team.

(3) Based on the assessments done under subsection (2) of this section the facility staff may refer any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive, or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency medical evaluation and possible care, for evaluation pursuant to chapter 71.34 RCW, to a mental health professional pursuant to chapter 71.05 RCW, or to a chemical dependency specialist pursuant to chapter 70.96A RCW whenever such action is deemed appropriate and consistent with law.

(4) A juvenile taking unauthorized leave from (~~(this residence may))~~ a facility shall be apprehended and returned to it by law enforcement officers or other persons designated as having this authority as provided in RCW 13.32A.050. If returned to the facility after having taken unauthorized leave for a period of more than twenty-four hours a juvenile (~~(may))~~ shall be supervised by such a facility for a period, pursuant to this chapter, which, unless where otherwise provided, may not exceed five consecutive days on the premises. Costs of housing juveniles admitted to crisis residential centers shall be assumed by the department for a period not to exceed five consecutive days.

Sec. 63. RCW 74.13.034 and 1992 c 205 s 214 are each amended to read as follows:

(1) A child taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032~~((2))~~ may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center ~~((or))~~ the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both ~~((centers))~~ locations shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(2) A child taken into custody and taken to a crisis residential center established by this chapter may be placed physically by the department or the department's designee and, at departmental expense and approval, in a secure juvenile detention facility operated by the county in which the center is located for a maximum of forty-eight hours, including Saturdays, Sundays, and holidays, if the child has taken unauthorized leave from the center and the person in charge of the center determines that the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave. Juveniles placed in such a facility pursuant to this section may not, to the extent possible, come in contact with alleged or convicted juvenile or adult offenders.

(3) Any child placed in secure detention pursuant to this section shall, during the period of confinement, be provided with appropriate treatment by the department or the department's designee, which shall include the services defined in RCW 74.13.033(2). If the child placed in secure detention is not returned home or if an alternative living arrangement agreeable to the parent and the child is not made within twenty-four hours after the child's admission, the child shall be taken at the department's expense to a crisis residential center. Placement in the crisis residential center or centers plus placement in juvenile detention shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(4) Juvenile detention facilities used pursuant to this section shall first be certified by the department to ensure that juveniles placed in the facility pursuant to this section are provided with living conditions suitable to the well-being of the child. Where space is available, juvenile courts, when certified by the department to do so, shall provide secure placement for juveniles pursuant to this section, at department expense.

~~((5) It is the intent of the legislature that by July 1, 1982, crisis residential centers, supplemented by community mental health programs and mental health professionals, will be able to respond appropriately to children admitted to centers under this chapter and will be able to respond to the needs of such children with appropriate treatment, supervision, and structure.))~~

***Sec. 64.** RCW 74.13.035 and 1979 c 155 s 81 are each amended to read as follows:

Crisis residential centers shall compile ((yearly)) quarterly records which shall be transmitted to the department and which shall contain information regarding population profiles of the children admitted to the centers during each past calendar year. Such information shall include but shall not be limited to the following:

- (1) The number, county of residency, age, and sex of children admitted to custody;*
- (2) Who brought the children to the center;*
- (3) Services provided to children admitted to the center;*
- (4) The circumstances which necessitated the children being brought to the center;*
- (5) The ultimate disposition of cases;*
- (6) The number of children admitted to custody who ran away from the center and their ultimate disposition, if any;*
- (7) Length of stay.*

The department may require the provision of additional information and may require each center to provide all such necessary information in a uniform manner.

The department shall report to the legislature within one year of the initial contracts establishing crisis residential centers operated as a secure facility. The report shall evaluate and compare the information required to be compiled in this section for the secure and semi-secure facilities of crisis residential centers. The department shall include plans for establishing secure facilities as funds are appropriated.

A center may, in addition to being licensed as such, also be licensed as a ((family foster home or)) group care facility and may house on the premises juveniles assigned for temporary out-of-home placement or foster or group care.

*Sec. 64 was vetoed. See message at end of chapter.

Sec. 65. RCW 74.13.036 and 1989 c 175 s 147 are each amended to read as follows:

(1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall ((, by January 1, 1986,)) develop a plan and procedures, in cooperation with the state-wide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the ~~((alternative residential))~~ child in need of services placement process;

(b) Procedures for designating department staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

~~((The plan and procedures required under this subsection shall be submitted to the appropriate standing committees of the legislature by January 1, 1986.))~~

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

(4) The secretary shall submit a quarterly report to the appropriate local government entities.

~~((5) Where appropriate, the department shall request opinions from the attorney general regarding correct construction of these laws.))~~

NEW SECTION. Sec. 66. A new section is added to chapter 28A.225 RCW to read as follows:

For purposes of this chapter, "community truancy board" means a board composed of members of the local community in which the child attends school. The local school district boards of directors may create a community truancy board. Members of the board shall be selected from representatives of the community. Duties of a community truancy board shall include, but not be limited to, recommending methods for improving school attendance.

Sec. 67. RCW 28A.225.020 and 1992 c 205 s 202 are each amended to read as follows:

If a ~~((juvenile))~~ child required to attend school under the laws of the state of Washington fails to attend school without valid justification, the ~~((juvenile's))~~ child's school shall:

(1) Inform the ~~((juvenile's))~~ child's custodial parent, parents, or guardian by a notice in writing or by telephone ~~((that))~~ whenever the ~~((juvenile))~~ child has failed to attend school ~~((without valid justification))~~ after one unexcused absence within any month during the current school year;

(2) Schedule a conference or conferences with the custodial parent, parents, or guardian and ~~((juvenile))~~ child at a time and place reasonably convenient for all persons included for the purpose of analyzing the causes of the ~~((juvenile's))~~ child's absences after two unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the second unexcused absence, then the school district may schedule this conference on that day; and

(3) Take steps to eliminate or reduce the ~~((juvenile's))~~ child's absences. These steps shall include, where appropriate, adjusting the ~~((juvenile's))~~ child's school program or school or course assignment, providing more individualized or remedial instruction, ~~((preparing the juvenile for employment with specific))~~ providing appropriate vocational courses or work experience, or ~~((both))~~ refer the child to a community truancy board, ((and)) or assisting the parent or ~~((student))~~ child to obtain supplementary services that might eliminate or ameliorate the cause or causes for the absence from school.

Sec. 68. RCW 28A.225.030 and 1992 c 205 s 203 are each amended to read as follows:

If the actions taken by a school ~~((pursuant to))~~ district under RCW 28A.225.020 ~~((is))~~ are not successful in substantially reducing ~~((a))~~ an enrolled student's absences from school, ~~((any of the following actions may be taken after five or more))~~ upon the fifth unexcused absence((s)) by a child within any month during the current school year or upon the tenth unexcused absence during the current school year ~~((: (1) The attendance officer of))~~ the school district ~~((through its attorney may))~~ shall file a petition with the juvenile court ((to assume jurisdiction under RCW 28A.200.010, 28A.200.020, and 28A.225.010 through 28A.225.150 for the purpose of)) alleging a violation of RCW 28A.225.010; (1) By the parent; ((or)) (2) ((a petition alleging a violation of RCW 28A.225.010 by a)) by the child ((may be filed with the juvenile court by the parent of such child or by the attendance officer of the school district through its attorney at the request of the parent. If the court assumes jurisdiction in such an instance, the provisions of RCW 28A.200.010, 28A.200.020, and 28A.225.010 through 28A.225.150, except where otherwise stated, shall apply)); or (3) by the parent and the child.

If the school district fails to file a petition under this section, the parent of a child with five or more unexcused absences in any month during the current school year or upon the tenth unexcused absence during the current school year

may file a petition with the juvenile court alleging a violation of RCW 28A.225.010.

NEW SECTION. Sec. 69. A new section is added to chapter 28A.225 RCW to read as follows:

(1) A petition under RCW 28A.225.030 shall consist of a written notification to the court alleging that:

(a) The child has five or more unexcused absences within any month during the current school year or ten or more unexcused absences in the current school year;

(b) Actions taken by the school district have not been successful in substantially reducing the child's absences from school; and

(c) Court intervention and supervision are necessary to assist the school district or parent to reduce the child's absences from school.

(2) The petition shall set forth the name, age, school, and residence of the child and the names and residence of the child's parents.

(3) The petition shall set forth facts that support the allegations in this section and shall generally request relief available under this chapter.

(4) When a petition is filed under RCW 28A.225.030, the juvenile court may:

(a) Schedule a fact-finding hearing at which the court shall consider the petition;

(b) Separately notify the child, the parent of the child, and the school district of the fact-finding hearing;

(c) Notify the parent and the child of their rights to present evidence at the fact-finding hearing; and

(d) Notify the parent and the child of the options and rights available under chapter 13.32A RCW.

(5) The court may require the attendance of both the child and the parents at any hearing on a petition filed under RCW 28A.225.030.

(6) The court shall grant the petition and enter an order assuming jurisdiction to intervene for the remainder of the school year, if the allegations in the petition are established by a preponderance of the evidence.

(7) If the court assumes jurisdiction, the school district shall regularly report to the court any additional unexcused absences by the child.

Sec. 70. RCW 36.18.020 and 1993 c 435 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))~~ the 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 in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee,

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~~) the 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 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 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 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 the clerk may collect an execution fee as authorized by the federal government.

(16) For 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.

(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.

(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.

(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. 71. A new section is added to chapter 28A.225 RCW to read as follows:

In any judicial district having a court commissioner, the court commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear all cases under RCW 28A.225.030, 28A.225.090, and section 69 of this act and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050. In any judicial district having a family law commissioner appointed pursuant to chapter 26.12 RCW, the family law commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear cases under RCW 28A.225.030,

28A.225.090, and section 69 of this act and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050.

NEW SECTION. Sec. 72. A new section is added to chapter 28A.225 RCW to read as follows:

(1) Each school shall document the actions taken under RCW 28A.225.020 and 28A.225.030 and report this information at the end of each grading period to the school district superintendent who shall compile the data for all the schools in the district and prepare an annual school district report for each school year and submit the report to the superintendent of public instruction. The reports shall be made upon forms furnished by the superintendent of public instruction and shall be transmitted as determined by the superintendent of public instruction.

(2) The reports under subsection (1) of this section shall include:

(a) The number of enrolled students and the number of excused and unexcused absences;

(b) Documentation of the steps taken by the school district under each subsection of RCW 28A.225.020;

(c) The number of enrolled students with ten or more unexcused absences in a school year or five or more unexcused absences in a month during a school year;

(d) Documentation of success by the school district in substantially reducing enrolled student absences for students with five or more absences in any month or ten or more unexcused absences in any school year;

(e) The number of petitions filed by a school district or a parent with the juvenile court; and

(f) The disposition of cases filed with the juvenile court, including the frequency of contempt orders issued to enforce a court's order under RCW 28A.225.090.

(3) A report required under this section shall not disclose the name or other identification of a child or parent.

(4) The superintendent of public instruction shall collect these reports from all school districts and prepare an annual report for each school year to be submitted to the legislature no later than December 15th of each year.

Sec. 73. RCW 28A.225.060 and 1990 c 33 s 223 are each amended to read as follows:

Any (~~attendance officer~~) school district official, sheriff, deputy sheriff, marshal, police officer, or any other officer authorized to make arrests, (~~shall~~) may take into custody without a warrant a child who is required under the provisions of RCW 28A.225.010 through 28A.225.140 to attend school(~~such child then being a truant from instruction at the school which he or she is lawfully required to attend~~) and is absent from school without an approved

excuse, and shall (~~forthwith~~) deliver (~~a child so detained either~~) the child to:
 (1) ~~(to)~~ The custody of a person in parental relation to the child (~~or~~); (2)
~~(to)~~ the school from which the child is (~~then a truant~~) absent; or (3) a
program designated by the school district.

Sec. 74. RCW 28A.225.090 and 1992 c 205 s 204 are each amended to read as follows:

Any person violating any of the provisions of either RCW 28A.225.010 or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. However, a child found to be in violation of RCW 28A.225.010 shall be required to attend school and shall not be fined. If the child fails to comply with the court order to attend school, the court may: (1) Order the child be punished by detention; or (~~may~~) (2) impose alternatives to detention such as community service hours or participation in dropout prevention programs or referral to a community truancy board, if available. Failure by a child to comply with an order issued under this section shall not be punishable by detention for a period greater than that permitted pursuant to a contempt proceeding against a child under chapter 13.32A RCW. It shall be a defense for a parent charged with violating RCW 28A.225.010 to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the (~~juvenile's~~) child's school did not perform its duties as required in RCW 28A.225.020. The court may order the parent to provide community service at the child's school instead of imposing a fine. Any fine imposed pursuant to this section may be suspended upon the condition that a parent charged with violating RCW 28A.225.010 shall participate with the school and the (~~juvenile~~) child in a supervised plan for the (~~juvenile's~~) child's attendance at school or upon condition that the parent attend a conference or conferences scheduled by a school for the purpose of analyzing the causes of a child's absence.

~~(Attendance officers)~~ School districts shall make complaint for violation of the provisions of RCW 28A.225.010 through 28A.225.140 to a judge of the ~~(superior or district)~~ juvenile court.

Sec. 75. RCW 28A.225.110 and 1990 c 33 s 228 are each amended to read as follows:

Notwithstanding the provisions of RCW 10.82.070, fifty percent of all fines except as otherwise provided in RCW 28A.225.010 through 28A.225.140 shall (~~here and~~) be applied to the support of the public schools in the school district where such offense was committed: 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~~), and fifty percent shall be paid to the county treasurer who shall deposit such amount to the credit of the courts in the county for the exclusive purpose of enforcing the provisions of RCW 28A.225.010 through 28A.225.140.

***NEW SECTION.** *Sec. 76. A new section is added to chapter 28A.225 RCW to read as follows:*

(1) Prior to the beginning of each new semester, quarter, or other academic period followed by a district, each district shall prepare a list of its enrolled students who, during the previous one hundred eighty days, have substantially failed to carry out their school attendance responsibility under RCW 28A.225.010(1). The list shall be effective for the duration of the new semester, quarter, or other academic period. A student shall be considered to have "substantially failed" to carry out this responsibility if the student has been absent from school without excuse for five or more school days during the one hundred eighty school days preceding the date on which the list is published. For purposes of this subsection, the number of "school days" absent without excuse shall be determined by dividing the number of hours the student was absent without excuse by the number of hours in the student's average school day.

(2) No student on the district's list prepared under subsection (1) of this section shall be permitted to enroll in a traffic safety education course offered by a school district or offered by a driver training school under chapter 46.82 RCW or shall be permitted to obtain an application for a driver's license under chapter 46.20 RCW. A school district shall provide the notice specified under section 79 of this act, resulting in the suspension of the student's driving privilege.

**Sec. 76 was vetoed. See message at end of chapter.*

***NEW SECTION.** *Sec. 77. A new section is added to chapter 46.82 RCW to read as follows:*

A driver training school may not provide instruction in the operation of an automobile to a minor who is subject to section 76 of this act, unless the driver training school is provided with a statement by the principal of the minor's school that the minor is not on the school district's list of students who have substantially failed to carry out their school attendance responsibilities.

**Sec. 77 was vetoed. See message at end of chapter.*

***Sec. 78.** *RCW 46.20.100 and 1990 c 250 s 36 are each amended to read as follows:*

The department of licensing shall not consider an application of any minor under the age of eighteen years for a driver's license or the issuance of a motorcycle endorsement for a particular category unless:

(1) The application is also signed by a parent or guardian having the custody of such minor, or in the event a minor under the age of eighteen has no father, mother, or guardian, then a driver's license shall not be issued to the minor unless his or her application is also signed by the minor's employer; ~~((and))~~

(2) If the applicant is a student subject to section 76 of this act, the department is provided with proof that the applicant is not on the district's list

of students who have substantially failed to carry out their school attendance responsibilities.

(3) *The applicant has satisfactorily completed a traffic safety education course as defined in RCW 28A.220.020, conducted by a recognized secondary school, that meets the standards established by the office of the state superintendent of public instruction or the applicant has satisfactorily completed a traffic safety education course, conducted by a commercial driving instruction enterprise, that meets the standards established by the office of the superintendent of public instruction and is officially approved by that office on an annual basis: PROVIDED, HOWEVER, That the director may upon a showing that an applicant was unable to take or complete a driver education course waive that requirement if the applicant shows to the satisfaction of the department that a need exists for the applicant to operate a motor vehicle and he or she has the ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property, under rules to be promulgated by the department in concert with the supervisor of the traffic safety education section, office of the superintendent of public instruction. For a person under the age of eighteen years to obtain a motorcycle endorsement, he or she must successfully complete a motorcycle safety education course that meets the standards established by the department of licensing.*

The department may waive any education requirement under this subsection for an applicant previously licensed to drive a motor vehicle or motorcycle outside this state if the applicant provides proof satisfactory to the department that he or she has had education equivalent to that required under this subsection.

*Sec. 78 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 79. A new section is added to chapter 46.20 RCW to read as follows:*

Upon receipt of a notice from a school district that a juvenile is on the district's list of students who have substantially failed to carry out their school attendance responsibilities under section 76 of this act, the department shall suspend for ninety days all driving privileges of such student. The department shall adopt rules to implement this section.

*Sec. 79 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 80. The superintendent of public instruction, in consultation with school districts and the department of licensing, shall develop necessary forms and procedures for demonstrating that juveniles are not on the school district's list of students who have substantially failed to carry out their school attendance responsibilities. The procedures shall be established and operational by September 1, 1996.*

*Sec. 80 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 81. (1) The Washington state institute for public policy shall review and evaluate the process of filing petitions under RCW 28A.225.030 and section 69 of this act, including:

- (a) The number of petitions filed by school districts;
- (b) The disposition of petitions filed;
- (c) The frequency of penalties and fines ordered by the courts;
- (d) The frequency of contempt orders issued to enforce court orders; and
- (e) The effectiveness of the petition process in reducing unexcused absences.

The institute shall submit a report of its findings to the legislature by January 1, 1998.

(2) The institute, in consultation with the superintendent of public instruction and other members of the education community, shall review and evaluate the need to develop a state-wide definition of excused and unexcused absences. The institute shall submit a report of its findings to the legislature by January 1, 1996.

(3) The institute, in consultation with the superintendent of public instruction, the state board of education, and other members of the education community, shall review and evaluate the need to prohibit school districts from suspending or expelling students as disciplinary measures in response to unexcused absences of the students. The institute shall submit a report of its findings to the legislature by January 1, 1996.

(4) If specific funding for the purpose of this section is not provided by June 30, 1995, in the omnibus appropriations act, this section is null and void.

NEW SECTION. Sec. 82. A new section is added to chapter 28A.600 RCW to read as follows:

School district boards of directors shall review school district policies regarding access and egress by students from secondary school grounds during school hours. Each school district board of directors shall adopt a policy specifying any restrictions on students leaving secondary school grounds during school hours.

Sec. 83. RCW 82.14.300 and 1990 2nd ex.s. c 1 s 1 are each amended to read as follows:

The legislature finds and declares that local government criminal justice systems are in need of assistance. Many counties and cities are unable to provide sufficient funding for additional police protection, mitigation of congested court systems, public safety education, and relief of overcrowded jails.

In order to ensure public safety, it is necessary to provide fiscal assistance to help local governments to respond immediately to these criminal justice problems, while initiating a review of the criminal justice needs of cities and counties and the resources available to address those needs.

To provide for a more efficient and effective response to these problems, the legislature encourages cities and counties to coordinate strategies against crime and use multijurisdictional and innovative approaches in addressing criminal justice problems.

~~((The legislature intends to provide fiscal assistance to counties and cities in the manner provided in this act until the report of the task force created under RCW 82.14.301 is available for consideration by the legislature.))~~

Sec. 84. RCW 82.14.320 and 1993 sp.s. c 21 s 2 are each amended to read as follows:

(1) The municipal criminal justice assistance account is created in the state treasury.

(2) No city may receive a distribution under this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of one hundred twenty-five percent of the state-wide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(3) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than one hundred fifty percent of the state-wide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice assistance account for distribution under this section shall be distributed at such times as distributions are made under RCW 82.44.150. The distributions shall be made as follows:

(a) Unless reduced by this subsection, thirty percent of the moneys shall be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than one hundred seventy-five percent of the state-wide average crime rate. No city may receive more than fifty percent of any moneys distributed under this subsection (a) but, if a city distribution is reduced as a result of exceeding the fifty percent limitation, the amount not distributed shall be distributed under (h) of this subsection.

(b) The remainder of the moneys, including any moneys not distributed in subsection (2)(a) of this section, shall be distributed to all cities eligible under subsection (2) of this section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than thirty percent of all moneys distributed under subsection (3) of this section.

(5) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located.

(6) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

NEW SECTION. Sec. 85. (1) Section 71 of this act shall take effect September 1, 1995.

(2) Section 82 of this act shall take effect September 1, 1996.

NEW SECTION. Sec. 86. The following acts or parts of acts are each repealed:

(1) RCW 28A.225.040 and 1990 c 33 s 221 & 1969 ex.s. c 223 s 28A.27.030;

(2) RCW 28A.225.050 and 1990 c 33 s 222, 1986 c 132 s 4, 1975 1st ex.s. c 275 s 56, 1971 c 48 s 9, 1969 ex.s. c 176 s 105, & 1969 ex.s. c 223 s 28A.27.040;

(3) RCW 28A.225.070 and 1990 c 33 s 224, 1975 1st ex.s. c 275 s 57, 1969 ex.s. c 176 s 106, & 1969 ex.s. c 223 s 28A.27.080;

(4) RCW 28A.225.100 and 1990 c 33 s 227, 1987 c 202 s 190, 1975 1st ex.s. c 275 s 58, & 1970 ex.s. c 15 s 14;

(5) RCW 28A.225.120 and 1990 c 33 s 229, 1986 c 132 s 6, 1979 ex.s. c 201 s 7, & 1969 ex.s. c 223 s 28A.27.110;

(6) RCW 28A.225.130 and 1990 c 33 s 230, 1987 c 202 s 192, & 1969 ex.s. c 223 s 28A.27.120; and

(7) RCW 28A.225.150 and 1992 c 205 s 205, 1990 c 33 s 232, & 1986 c 132 s 7.

NEW SECTION. Sec. 87. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1995, in the omnibus appropriations act, this act is null and void.

Passed the Senate April 23, 1995.

Passed the House April 23, 1995.

Approved by the Governor May 10, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 10, 1995.

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

"I am returning herewith, without my approval as to sections 9, 30, 31, 33, 35, 38, 50, 51, 55, 57, 59, 64, 76, 77, 78, 79 and 80 Engrossed Second Substitute Senate Bill 5439 entitled:

"AN ACT Relating to revising procedures for nonoffender at-risk youth and their families;"

I commend the legislature for its hard work and bipartisan approach in passing Engrossed Second Substitute Senate Bill No. 5439. This important legislation, which relates primarily to the laws governing at-risk youth and families in conflict, squarely addresses the major problems that have arisen since the enactment of our 1977 Juvenile Justice Act. It empowers parents to help their children when they have run away or when their child's substance abuse or mental health problems place them in serious danger of harming themselves or others. In addition, it establishes a voluntary, community-based process to assist families in conflict, thereby helping to prevent or alleviate such problems as truancy, running away, substance abuse, mental illness, and juvenile delinquency. Further, it compels school districts to address the troubling issue of truancy among their students.

Although I am vetoing certain sections of the bill — some for technical purposes and others for their unintended effects — our goal of supporting parents and protecting our children remains uncompromised.

In signing Engrossed Second Substitute Senate Bill No. 5439, I am confirming the understanding and intent that the criteria specified in section 12(2)(a) apply to and must be satisfied in any and all situations where a youth is to be placed or to remain for any period of time in a secure crisis residential center (CRC) up to the five-day limit specified. Those situations include, but are not limited to, when a youth first appears at a secure CRC and remains for any period of time; when a youth first appears at a semi-secure CRC and is immediately transferred to a secure CRC; or when a youth first appears at or is placed in a semi-secure CRC, at any time during the five-day period.

My reasons for vetoing these sections are as follows:

Section 9 - Parental Financial Contribution

Section 9 requires the parents of a child placed in a CRC to contribute \$50 per day for the expense of the placement. The section also permits the Department of Social and Health Services (DSHS) to establish a payment schedule requiring lesser payment based on parents' ability to pay. The underlying premise of this section — that parents should shoulder a reasonable proportion of the state's cost for providing care to their children — is something with which I wholeheartedly agree. However, as drafted, this section is inconsistent with federal child support guidelines and may jeopardize our state's receipt of federal funding. Accordingly, I am directing DSHS to collect parental contributions administratively using the current child support system.

Section 30 - Habitual Runaways

Section 30 permits a court, during the disposition phase of an at-risk youth (ARY) or a child in need of services (CHINS) petition proceeding, to make a finding that the child who is the subject of the proceeding is an habitual runaway. The court may place an habitual runaway in a facility with adequate security for up to 180 days to ensure that the child not only remains in the facility, but also participates in programming designed to remedy the child's "behavioral difficulties." To order this disposition, the court must find that the placement is clearly necessary to protect the child and that less restrictive

orders would be inadequate. This section also permits the court, as an additional sanction, to order the suspension of an habitual runaway's driver's license for 90 days.

I have several concerns with this section. First, I am concerned about the serious constitutional issue raised by the unusual procedure set forth. This section allows the court to find that a child is an habitual runaway without requiring this allegation to be pled and proved during the fact-finding hearing. This appears to violate the due process rights of youth who would have no opportunity to contest such a finding during a proceeding. The language does not provide a clear understanding of the legislature's intent in establishing this disposition and gives courts almost unlimited discretion in using it. The section allows the court to place an habitual runaway in a secure "facility" that offers programming designed to remedy "behavior difficulties." Unfortunately, these terms are not defined, leaving it unclear what type of secure facilities and programming the legislature intends to make available for habitual runaways. Further, there is nothing in this section that prohibits the court from placing a youth in an out-of-state facility or in a facility program that is not state approved or certified, nothing requiring a court to consider whether the receiving facility has any space available that is appropriate to meet the child's needs, and nothing restricting a court from ordering a 180-day secure placement in cases where the parent has neither sought nor desires such an intrusive action.

Second, this section appears to be punishment-oriented in contrast to the overall focus of the legislation which is more appropriately oriented toward treatment. The section explicitly refers to the ability of the court to suspend an habitual runaway's driver's license as an "additional sanction." This referral suggests that the preceding portion of section 30, relating to 180-day placements, is a sanction as well. By locking up young people as a sanction for running away from home, this section essentially recriminalizes this conduct. Such an effect is clearly contrary to the intent of treating troubled youth, and not punishing runaways.

Third, I am concerned about the fiscal issues relating to this provision. The section currently states that only state funds specifically appropriated for this purpose may be used to pay for these secure placements. If no funds are appropriated, this placement becomes an option only for those parents who can afford it. Even if funds were specifically appropriated, however, the level would likely be insufficient to cover the costs of this expensive disposition. I believe that scarce resources can be better targeted toward the bill's more treatment-oriented provisions.

Finally, I believe this provision is unnecessary in light of the other significant tools provided in this legislation to strengthen parents' ability to protect and help their children. For example, this bill allows the state to briefly hold a runaway in a locked CRC for the purpose of assessing the youth's condition and treatment needs. This brief "hold" period provides parents with the opportunity to reestablish contact with their runaway child (where such contact is not inappropriate) and to obtain services or other assistance that might be helpful in resolving the family conflict. To assist families who may need services, the bill authorizes the formation of community-based, multidisciplinary teams which are to develop voluntary treatment plans and coordinate referrals.

Parents' ability to maintain the care, custody, and control of their child are strengthened by requiring courts to accept properly filed at-risk youth petitions — the process through which parents may obtain a court order requiring their child to obey reasonable parental authority which includes regular school attendance, counseling, employment, refraining from the use of alcohol or drugs, and participation in a substance abuse or mental health outpatient treatment program. Current law provides that youth who violate these court orders may be found in contempt and placed in confinement for up to 7 days. Parents who wish to place their minor child in an approved substance

abuse or mental health treatment program may apply for admission without their child's consent. The bill also permits parents to appeal the decision of a county designated specialist not to commit the parents' minor child for involuntary inpatient treatment and seek court approval of an out-of-home placement for their child for a total period not to exceed 180 days. In light of this diverse and powerful set of tools, section 30 is unnecessary to help parents ensure the protection of their children.

Section 31 - Driver's License Suspensions

Section 31 requires the Department of Licensing (DOL) to suspend a juvenile's driving privileges for 90 days upon receiving an order pursuant to section 30. Because I have vetoed section 30, this section is ineffective.

Section 33 - Placement Review Hearings

Section 33 requires that permanency planning occur when children are placed in out-of-home care pursuant to an order under chapter RCW 13.32A. Specifically, a hearing must be held whenever any child under age 10 has remained in out-of-home care for more than nine months. If a child over age 10 has remained in out-of-home care for more than 15 months, a hearing must be held. At the hearing, the court must determine if the matter should be referred to DSHS for the filing of a dependency petition. In determining whether the case should be referred, the court must also determine if it is in the best interest of the child and family to begin permanency planning.

This section conflicts with existing state law that strictly limits the duration of placements and proceedings under RCW 13.32A. It also conflicts with federal funding requirements for permanency planning for children. Whenever a child is placed in out-of-home care under DSHS supervision, permanency planning begins from the date of placement and continues until the child returns home or some alternative permanency planning goal is achieved.

Section 33 also assumes that a child placed in out-of-home care under RCW 13.32A would remain there indefinitely. However, section 24(1) and (4) of this bill limits the duration of an out-of-home placement under a CHINS petition to a maximum of nine months.

Section 35 - Violation of Shelter Notification as a Misdemeanor Offense

Section 35 makes the violation of the requirements in section 34 of this legislation a misdemeanor. Section 34 requires shelter providers to report the location of a known runaway to the youth's parent, local law enforcement, or DSHS within 8 hours.

Youth shelters play an important role in providing many of our most vulnerable youth with a safe refuge from the streets. While I believe that shelter providers should have to notify DSHS, a parent, or law enforcement of the youth's presence as a way to access appropriate services or to reunite the family, where appropriate, I do not agree with making a violation of this requirement a crime.

In addition, I strongly believe that shelters providing services for vulnerable youth must be licensed to protect their safety and well-being. Yet, despite a law requiring licensure, a number of shelters are not licensed. Accordingly, in an effort to achieve improved compliance with this mandate, I am directing DSHS, in cooperation with shelter providers or their representatives, to conduct a thorough review of our current licensing requirements and to provide me with recommended changes, including legislative amendments, by September 30, 1995.

Section 38 - Sibling Information

Section 38 requires CRC administrators to request from DSHS the names of the admitting youth's siblings who have been under the jurisdiction of the juvenile rehabilitation administration or who are the subject of a dependency proceeding. In addition, DSHS must provide information on whether the presenting youth has run away multiple times.

Although sibling information may in some cases be useful in assessing the situation of a runaway child, I am troubled by the privacy implications of this section. I understand that some of this information may be confidential and, under current law, cannot be disclosed to the CRC administrator. The laws surrounding confidentiality have posed a number of problems relating to records and information sharing. As a result, several members of the legislature have committed to conducting a comprehensive review of those laws during the interim. I believe that this issue should be addressed as part of that review, with any changes to statute coming after the review is complete. We want to ensure that the privacy interests of siblings and of their families are protected.

Section 50 - Outpatient Drug/Alcohol Treatment; Notice to Parents

Section 50 requires that treatment providers must notify parents within 48 hours that their minor child has voluntarily requested substance abuse treatment.

This section violates federal law governing confidentiality of alcohol and drug abuse records which states that these treatment records may be disclosed only with the consent of the patient or as authorized by law. Where, as in this instance, there would be a conflict between state and federal law, federal law would be controlling. In addition, I am greatly concerned about the chilling effect that this requirement may have on minors seeking treatment for a substance abuse problem — particularly older youth. Therapists and counselors typically seek to involve the parents in a family counseling setting which is a more effective and appropriate means to provide parents such information.

Sections 51 and 57 - Treatment Referrals by School District Personnel

Section 51 and 57 state that school district personnel are not authorized to refer minors to any treatment program or provider without providing notice of the referral to the minor's parent.

The majority of referrals of minors to substance abuse programs across the state come from school districts. From these referrals, many youth receive assistance for their substance abuse problems. This language would have the effect of prohibiting school districts from making these referrals, thereby causing many youth with serious problems not to seek the treatment they need. I do not want to erect any obstacle that would prevent any youth who seeks treatment from obtaining it.

Section 55 - Notice to Parents for Outpatient Mental Health Treatment

Section 55 requires treatment providers to notify parents that their child has voluntarily sought outpatient mental health treatment. I am vetoing this section because of the chilling effect it will have on youth seeking such treatment.

Section 59 - Child Welfare Services

Section 59 includes technical changes to RCW 74.13.031. This section was also substantively amended in Senate Bill No. 5029 which makes changes related to a children's services advisory committee and other changes not properly merged with this section.

Section 64 - Specialized Foster Homes as CRCs

Section 64 deletes the provision permitting specialized foster homes to be used as CRC beds. It also requires DSHS to provide the legislature with a report comparing secure and semi-secure CRCs.

I believe the deletion of specialized foster homes was an inadvertent amendment by the legislature because the bill continues the use of semi-secure CRCs, and specialized foster homes comprise a number of these beds. However, I agree with the legislature that to the extent we use secure CRC beds for a limited purpose, DSHS should report to the legislature on their use. Accordingly, I am directing DSHS to report to the legislature within one year after the initial contracts establishing secure CRCs are established. The report shall evaluate and compare the use and operation, including resident demographics of semi-secure and secure facility CRCs.

Sections 76 through 80 - Truancy

As with the immediately preceding sections of this bill, sections 76 through 80 address the issue of truancy. Sections 76 through 79 attempt to discourage students' unexcused absences from school by denying driving privileges to those students who have substantially failed to carry out their attendance responsibilities.

Section 76 requires school districts, at the beginning of each new academic period, to list those students who in the previous 180 days have substantially failed to carry out their attendance responsibilities. Because I am vetoing sections 77 through 80, which deal with a minor's ability to apply for a driver's license, this section is not necessary.

Section 77 prohibits a student from enrolling in commercial driver's training unless the principal of the minor's school attests that the student is not on the district's list of truant students. Section 78 prohibits the Department of Licensing (DOL) from considering an application of any minor for a driver's license unless DOL is provided with proof that the applicant is not on the particular district's list of truant students. Section 79 requires DOL, upon notification by a school district that the student is on the district's truancy list, to suspend the student's license for 90 days.

While I support the legislature's effort to compel students to attend school regularly, I believe these provisions do not constitute sound public policy. Rather than discouraging students from missing school, I believe these sections could actually encourage students older than age 15, who are not required by law to attend school, to drop-out in order to protect their driving privilege. Thus, the actual effect of these sections could be to increase the number of school dropouts rather than to reduce truancy. Further, section 79 does not require appropriate notice of students' license suspension to parents and also lacks necessary due process in the form of a pre-suspension hearing by the state.

Truancy is an extremely important issue as it frequently is an early indicator of other problems. If we are going to address this issue effectively, the whole community must be involved. Truancy is not only the responsibility of our schools. Although the bill compels school districts to take tangible steps to address this issue, it's clearly not the entire answer. Accordingly, I urge the legislature, together with representatives of schools, education organizations, appropriate state agencies and other interested groups,

to convene a work group as soon as possible to develop effective recommendations redefining compulsory attendance and truancy within the context of our state's education restructuring efforts and evaluating the critical connection between school attendance, youth violence, incarceration, and related social problems. It is clear that the problems of school attendance continue to be an obvious symptom of youth at-risk; however, other significant factors beyond the classroom should also be considered and addressed to ensure the safety and the quality education of our students.

Section 80 requires the superintendent of public instruction, in consultation with others, to develop necessary forms and procedures for demonstrating that students are not on the school's truancy list. Because I have vetoed sections 76 through 79, this section is not necessary.

For these reasons, I have vetoed sections 9, 30, 31, 33, 35, 38, 50, 51, 55, 57, 59, 64, 76, 77, 78, 79 and 80 of Engrossed Second Substitute Senate Bill No. 5439.

With the exception of sections 9, 30, 31, 33, 35, 38, 50, 51, 55, 57, 59, 64, 76, 77, 78, 79 and 80, Engrossed Second Substitute Senate Bill No. 5439 is approved."

CHAPTER 313

[Substitute House Bill 1756]

DEPENDENT CHILDREN—PROCEEDINGS

AN ACT Relating to dependent children; and amending RCW 13.34.110 and 13.34.130.

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

Sec. 1. RCW 13.34.110 and 1993 c 412 s 7 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 the parties, their attorneys, the guardian ad litem, and court-appointed special advocates, if any, are all in agreement. 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. Unless the court states on the record the reasons to disallow attendance, the court shall allow a child's relatives and, 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))~~ all hearings and proceedings pertaining to the child for the sole purpose of providing oral and written information about the child and the child's welfare 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. 2. RCW 13.34.130 and 1994 c 288 s 4 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030; after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(i) There is no parent or guardian available to care for such child;

(ii) The parent, guardian, or legal custodian is not willing to take custody of the child;

(iii) A manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or

(iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds it is recommended by the supervising agency, that it is in the best interests of the child and that it is not reasonable to provide further services to reunify the family because the existence of aggravated circumstances make it unlikely that services will effectuate the return of the child to the child's parents in the near future. In determining whether aggravated circumstances exist, the court shall consider 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 and 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.

(3) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the

agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

(4) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

(5) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall

be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

Passed the House April 19, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 314

[House Bill 1117]

LOCAL PENAL INSTITUTIONS—CRIMES AGAINST PENAL
ORDER AND DISCIPLINE

AN ACT Relating to penal institutions; and amending RCW 9.94.010, 9.94.020, 9.94.030, 9.94.040, 9.94.041, and 9.94.049; and prescribing penalties.

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

Sec. 1. RCW 9.94.010 and 1955 c 241 s 1 are each amended to read as follows:

Whenever two or more inmates of a ~~((state penal))~~ correctional institution assemble for any purpose, and act in such a manner as to disturb the good order of ~~((such))~~ the institution and contrary to the commands of the officers of ~~((such))~~ the institution, by the use of force or violence, or the threat thereof, and whether acting in concert or not, they shall be guilty of prison riot.

Sec. 2. RCW 9.94.020 and 1992 c 7 s 19 are each amended to read as follows:

Every inmate of a ~~((state))~~ correctional ~~((facility))~~ institution who is guilty of prison riot or of voluntarily participating therein by being present at, or by instigating, aiding or abetting the same, shall be punished by imprisonment in a state correctional ~~((facility))~~ institution for not less than one year nor more than ten years, which shall be in addition to the sentence being served.

Sec. 3. RCW 9.94.030 and 1992 c 7 s 20 are each amended to read as follows:

Whenever any inmate of a ~~((state))~~ correctional ~~((facility))~~ institution shall hold, or participate in holding, any person as a hostage, by force or violence, or the threat thereof, or shall prevent, or participate in preventing an officer of such institution from carrying out his or her duties, by force or violence, or the threat thereof, he or she shall be guilty of a felony and upon conviction shall be punished by imprisonment in a state correctional ~~((facility))~~ institution for not less than one year nor more than ten years.

Sec. 4. RCW 9.94.040 and 1979 c 121 s 1 are each amended to read as follows:

(1) Every person serving a sentence in any ~~((penal))~~ state correctional institution ~~((of this state))~~ who, without legal authorization ~~((pursuant to law))~~, while in ~~((such penal))~~ the institution or while being conveyed to or from ~~((such penal))~~ the institution~~(, or while at any penal institution farm or forestry camp of such institution, or while being conveyed to or from any such place)~~, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another, is guilty of a class B felony.

(2) Every person confined in a county or local correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or has under his or her control a deadly weapon, as defined in RCW 9A.04.110, is guilty of a class B felony.

(3) The sentence imposed under this section shall be in addition to any sentence being served.

Sec. 5. RCW 9.94.041 and 1979 c 121 s 2 are each amended to read as follows:

(1) Every person serving a sentence in any ~~((penal))~~ state correctional institution ~~((of this state))~~ who, without legal authorization, while in ~~((such penal))~~ the institution or while being conveyed to or from ~~((such penal))~~ the institution, ~~((or while at any penal institution farm or forestry camp of such institution, or while being conveyed to or from any such place,))~~ or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any narcotic drug or controlled substance as defined in chapter 69.50 RCW is guilty of a class C felony.

(2) Every person confined in a county or local correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, is guilty of a class C felony.

(3) The sentence imposed under this section shall be in addition to any sentence being served.

Sec. 6. RCW 9.94.049 and 1992 c 7 s 21 are each amended to read as follows:

(1) For the purposes of this chapter, the term "correctional institution" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including state prisons, county and local jails, and other facilities operated by the department of corrections or local governmental units primarily for the purposes of punishment, correction, or rehabilitation following conviction of a criminal offense.

(2) For the purposes of RCW 9.94.043 and 9.94.045, "state correctional institution" means all state correctional facilities under the supervision of the secretary of the department of corrections used solely for the purpose of confinement of convicted felons.

Passed the House April 21, 1995.

Passed the Senate April 20, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 315

[Second Engrossed House Bill 1130]

LOCOMOTIVE HORNS—ORDINANCE MAY PROHIBIT SOUNDING AT CROSSING

AN ACT Relating to railroads; amending RCW 81.48.010; and creating a new section.

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

Sec. 1. RCW 81.48.010 and 1961 c 14 s 81.48.010 are each amended to read as follows:

Every engineer driving a locomotive on any railway who shall fail to ring the bell or sound the whistle upon such locomotive, or cause the same to be rung or sounded at least eighty rods from any place where such railway crosses a traveled road or street on the same level (except in cities, or in counties that enact ordinances applying only to crossings equipped with supplemental safety measures as provided in section 2 of this act), or to continue the ringing of such bell or sounding of such whistle until such locomotive shall have crossed such road or street, shall be guilty of a misdemeanor.

This section shall not apply to an engineer operating a locomotive within yard limits or when on track, which is not main line track, where crossing speed is restricted by published special instruction or bulletin to ten miles per hour or less.

NEW SECTION. Sec. 2. (1) The legislature hereby authorizes cities and counties to enact ordinances limiting or prohibiting the sounding of locomotive horns, provided the ordinance applies only at crossings equipped with supplemental safety measures. A supplemental safety measure is a safety device defined in P.L. 103-440, section 20153(a)(3), as that law existed on November 2, 1994. A supplemental safety measure that prevents careless movement over the crossing (e.g., as where adequate median barriers prevent movement around crossing gates extending over the full width of the lanes in a particular direction of travel), shall be deemed to conform to those standards required under P.L. 103-440 unless specifically rejected by emergency order issued by the United States secretary of the department of transportation.

(2) Prior to enacting the ordinance, the cities and counties shall provide written notification to the railroad companies affected by the proposed ordinance, and to the state utilities and transportation commission, for the purpose of providing an opportunity to comment on the proposed ordinance.

(3) Nothing in this section shall be construed as limiting the state's power, guaranteed by the tenth amendment to the Constitution of the United States, to

enact laws necessary for the health, safety, or welfare of the people of the state of Washington.

Passed the House April 19, 1995.

Passed the Senate April 5, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 316

[Substitute House Bill 1140]

CRIMINAL HISTORY—USE IN SENTENCING

AN ACT Relating to the use of criminal history in sentencing of offenders; amending RCW 9.94A.390; reenacting and amending RCW 9.94A.360; and prescribing penalties.

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

Sec. 1. RCW 9.94A.360 and 1992 c 145 s 10 and 1992 c 75 s 4 are each reenacted and amended to read as follows:

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Except as provided in subsection (4) of this section, class A and sex prior felony convictions shall always be included in the offender score. Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without ~~((being convicted of any felonies))~~ committing any crime that subsequently results in a conviction. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without ~~((being convicted of any felonies))~~ committing any crime that subsequently results in a conviction. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without ~~((being convicted of any serious traffic or felony traffic offenses))~~ committing any crime that subsequently

results in a conviction. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Always include juvenile convictions for sex offenses. Include other class A juvenile felonies only if the offender was 15 or older at the time the juvenile offense was committed. Include other class B and C juvenile felony convictions only if the offender was 15 or older at the time the juvenile offense was committed and the offender was less than 23 at the time the offense for which he or she is being sentenced was committed.

(5) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(6)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

~~((a))~~ (i) Prior adult offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior adult offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

~~((b))~~ (ii) Juvenile prior convictions entered or sentenced on the same date shall count as one offense, the offense that yields the highest offender score, except for juvenile prior convictions for violent offenses with separate victims, which shall count as separate offenses; and

~~((c))~~ (iii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (6), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the

concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(7) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense.

(8) If the present conviction is for a nonviolent offense and not covered by subsection (12) or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(9) If the present conviction is for a violent offense and not covered in subsection (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Murder 1 or 2, Assault 1, Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count three points for prior adult and juvenile convictions for crimes in these categories, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(11) If the present conviction is for Burglary 1, count prior convictions as in subsection (9) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(12) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense or serious traffic offense, count one point for each adult and 1/2 point for each juvenile prior conviction.

(13) If the present conviction is for a drug offense count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (9) of this section if the current drug offense is violent, or as in subsection (8) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, Willful Failure to Return from Work Release, RCW 72.65.070, or Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (8) of this section; however, count two points for each

adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (8) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for an offense committed while the offender was under community placement, add one point.

Sec. 2. RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read as follows:

If the sentencing court finds that an exceptional sentence outside the standard range should be imposed in accordance with RCW 9.94A.120(2), the sentence is subject to review only as provided for in RCW 9.94A.210(4).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(1) Mitigating Circumstances

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law, was significantly impaired (voluntary use of drugs or alcohol is excluded).

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) 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 is a response to that abuse.

(2) Aggravating Circumstances

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(c) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(d) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so; ~~((e))~~

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; ~~((e))~~

(iii) The current offense involved the manufacture of controlled substances for use by other parties; ~~((e))~~

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy; ~~((e))~~

(v) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional); ~~((e))~~.

(e) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127(~~(+)~~);

(f) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time(~~((+))~~);

(g) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter as expressed in RCW 9.94A.010.

Passed the House March 7, 1995.

Passed the Senate April 20, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 317

[Substitute House Bill 1144]

VETERINARIANS—IMPLANTATION OF ELECTRONIC IDENTIFICATION DEVICES INCLUDED IN SCOPE OF PRACTICE

AN ACT Relating to veterinary practice; and amending RCW 18.92.010 and 18.92.060.

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

Sec. 1. RCW 18.92.010 and 1959 c 92 s 1 are each amended to read as follows:

Any person shall be regarded as practicing veterinary medicine, surgery and dentistry within the meaning of this chapter who shall, within this state, (1) by advertisement, or by any notice, sign, or other indication, or by a statement written, printed or oral, in public or private, made, done, or procured by himself or herself, or any other, at his or her request, for him or her, represent, claim, announce, make known or pretend his or her ability or willingness to diagnose or prognose or treat diseases, deformities, defects, wounds, or injuries of animals; (2) or who shall so advertise, make known, represent or claim his or her ability and willingness to prescribe or administer any drug, medicine, treatment, method or practice, or to perform any operation, manipulation, or apply any apparatus or appliance for cure, amelioration, correction or reduction or modification of any animal disease, deformity, defect, wound or injury, for hire, fee, compensation, or reward, promised, offered, expected, received, or accepted directly or indirectly; (3) or who shall within this state diagnose or prognose any animal diseases, deformities, defects, wounds or injuries, for hire, fee, reward, or compensation promised, offered, expected, received, or accepted directly or indirectly; (4) or who shall within this state prescribe or administer any drug, medicine, treatment, method or practice, or perform any operation, or manipulation, or apply any apparatus or appliance for the cure, amelioration, alleviation, correction, or modification of any animal disease, deformity, defect, wound, or injury, for hire, fee, compensation, or reward, promised, offered, expected, received or accepted directly or indirectly; (5) or who performs any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock; (6) or who implants any electronic device for the purpose of establishing or maintaining positive identification of animals.

The opening of an office or place of business for the practice of veterinary medicine, the use of a sign, card, device or advertisement as a practitioner of veterinary medicine or as a person skilled in such practice shall be prima facie evidence of engaging in the practice of veterinary medicine, surgery and dentistry.

Sec. 2. RCW 18.92.060 and 1993 c 78 s 4 are each amended to read as follows:

Nothing in this chapter 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 practicing veterinary medicine upon his or her own animal;

(3) A person advising with respect to or performing the castrating and dehorning of cattle, castrating and docking of sheep, castrating of swine, caponizing of poultry, or artificial insemination of animals;

(4)(a) A person who is a regularly enrolled student in a veterinary school or training course approved under RCW 18.92.015 and 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. The practice of an animal technician or veterinary medication clerk is limited to the performance of services which are authorized by the board;

(7) An owner being assisted in practice by his or her employees when employed in the conduct of the owner's business;

(8) An owner being assisted in practice by some other person gratuitously;

(9) The implanting in their own animals of any electronic device for identifying animals by established humane societies and animal control organizations that provide appropriate training, as determined by the veterinary board of governors, and/or direct or indirect supervision by a licensed veterinarian;

(10) The implanting of any electronic device by a public fish and wildlife agency for the identification of fish or wildlife.

Passed the House April 20, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 318

[Engrossed Substitute House Bill 1165]

EXCISE AND PROPERTY TAX STATUTES—TECHNICAL CORRECTIONS

AN ACT Relating to technical correction of excise and property tax statutes; amending RCW 82.04.030, 82.32.145, 82.36.310, 82.48.010, 84.40.185, 9.41.135, 82.32.320, 84.34.230, 84.52.069, and 84.52.105; repealing 1994 sp.s. c 7 s 445; and declaring an emergency.

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

Sec. 1. RCW 82.04.030 and 1963 ex.s. c 28 s 1 are each amended to read as follows:

"Person" or "company", herein used interchangeably, means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

Sec. 2. RCW 82.32.145 and 1987 c 245 s 1 are each amended to read as follows:

(1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust under RCW 82.08.050, or who is charged with the responsibility for the filing of returns or the payment of retail sales tax funds collected and held in trust under RCW 82.08.050, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to chapter 82.08 RCW. For the purposes of this section, any retail sales taxes that have been paid but not collected shall be deductible from the retail sales taxes collected but not paid.

For purposes of this subsection "wilfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member or manager, or other person shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.

(3) Persons liable under subsection (1) of this section are exempt from liability in situations where nonpayment of the retail sales tax funds held in trust is due to reasons beyond their control as determined by the department by rule.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

(5) This section applies only in situations where the department has determined that there is no reasonable means of collecting the retail sales tax funds held in trust directly from the corporation.

(6) This section does not relieve the corporation or limited liability company of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in this chapter apply to collections under this section.

Sec. 3. RCW 82.36.310 and 1965 ex.s. c 79 s 13 are each amended to read as follows:

Any person claiming a refund for motor vehicle fuel used or exported as in this chapter provided shall not be entitled to receive such refund until he presents to the director a claim upon forms to be provided by the director with such information as the director shall require, which claim to be valid shall in all cases be accompanied by the original invoice or invoices issued to the claimant at the time of the purchases of the motor vehicle fuel, approved as to invoice form by the director: **PROVIDED**, That in the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit in lieu thereof a duplicate copy of such invoice certified by the vendor, but no payment of refund based upon such duplicate invoice shall be made until after expiration of such statutory period specified in RCW 82.36.330 for filing of refund applications.

Any person claiming refund by reason of exportation of motor vehicle fuel shall in addition to the invoices required furnish to the director the export certificate therefor, and the signature on the exportation certificate shall be certified by a notary public. In all cases the claim shall be signed by the person claiming the refund, (~~or~~) if it is a corporation, by some proper officer (~~thereof~~) of the corporation, or if it is a limited liability company, by some proper manager or member of the limited liability company.

Sec. 4. RCW 82.48.010 and 1987 c 220 s 5 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Aircraft" means any weight-carrying device or structure for navigation of the air which is designed to be supported by the air;

(2) "Secretary" means the secretary of transportation;

(3) "Person" includes a firm, partnership, limited liability company, or corporation;

(4) "Small multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of less than seventy-five hundred pounds; and

(5) "Large multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of seventy-five hundred pounds or more.

Sec. 5. RCW 84.40.185 and 1967 ex.s. c 149 s 41 are each amended to read as follows:

Every individual, corporation, limited liability company, association, partnership, trust, or estate shall list all personal property in his or its ownership, possession, or control which is subject to taxation pursuant to the provisions of this title. Such listing shall be made and delivered in accordance with the provisions of this (~~1967 amendatory act~~) chapter.

Sec. 6. RCW 9.41.135 and 1994 sp.s. c 7 s 418 are each amended to read as follows:

(1) At least once every twelve months, the department of licensing shall obtain a list of dealers licensed under 18 U.S.C. Sec. 923(a) with business premises in the state of Washington from the United States bureau of alcohol, tobacco, and firearms. The department of licensing shall verify that all dealers on the list provided by the bureau of alcohol, tobacco, and firearms are licensed and registered as required by RCW 9.41.100.

(2) At least once every twelve months, the department of licensing shall obtain from the department of revenue and the department of revenue shall transmit to the department of licensing a list of dealers registered with the department of revenue (~~whose gross proceeds of sales are below the reporting threshold provided in RCW 82.04.300~~), and a list of dealers whose names and addresses were forwarded to the department of revenue by the department of licensing under RCW 9.41.110, who failed to register with the department of revenue as required by RCW 9.41.100.

(3) At least once every twelve months, the department of licensing shall notify the bureau of alcohol, tobacco, and firearms of all dealers licensed under 18 U.S.C. Sec. 923(a) with business premises in the state of Washington who have not complied with the licensing or registration requirements of RCW 9.41.100(~~or whose gross proceeds of sales are below the reporting threshold provided in RCW 82.04.300~~). In notifying the bureau of alcohol, tobacco, and firearms, the department of licensing shall not specify whether a particular dealer has failed to comply with licensing requirements(~~or~~) or has failed to comply with registration requirements(~~or has gross proceeds of sales below the reporting threshold~~)).

Sec. 7. RCW 82.32.320 and 1975 1st ex.s. c 278 s 92 are each amended to read as follows:

The department of revenue, on the next business day following the receipt of any payments hereunder, shall transmit them to the state treasurer, taking his or her receipt therefor. If a return or payment is submitted with less than the full amount of all taxes, interest, and penalties due, the department may allocate payments among applicable funds so as to minimize administrative costs to the extent practicable.

Sec. 8. RCW 84.34.230 and 1994 c 301 s 33 are each amended to read as follows:

For the purpose of acquiring conservation futures as well as other rights and interests in real property pursuant to RCW 84.34.210 and 84.34.220, a county may levy an amount not to exceed six and one-quarter cents per thousand dollars of assessed valuation against the assessed valuation of all taxable property within the county(~~(, which levy shall be in addition to that authorized by RCW 84.52.043)~~). The limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section.

Sec. 9. RCW 84.52.069 and 1994 c 79 s 2 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, urban emergency medical service 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 percent of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting 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 percent of the total number of voters voting 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 cents. 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))~~ limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section.

(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.

Sec. 10. RCW 84.52.105 and 1993 c 337 s 2 are each amended 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.

(4) The limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section.

NEW SECTION. Sec. 11. 1994 sp.s. c 7 s 445 is repealed.

NEW SECTION. Sec. 12. 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, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 319

[Substitute House Bill 1205]

PHYSICIAN SELF-REFERRAL—LIMITATIONS ON

AN ACT Relating to physician referral; amending RCW 74.09.240, 18.64.011, and 18.64.255; reenacting and amending RCW 18.64.165; and adding new sections to chapter 18.64 RCW.

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

Sec. 1. RCW 74.09.240 and 1979 ex.s. c 152 s 5 are each amended to read as follows:

(1) Any person, including any corporation, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind

(a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter, or

(b) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter, shall be guilty of a class C felony(~~(—PROVIDED, That)~~); however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, including any corporation, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person

(a) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter, or

(b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter, shall be guilty of a class C felony(~~(--PROVIDED, That)~~); however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3)(a) Except as provided in 42 U.S.C. 1395 nn, physicians are prohibited from self-referring any client eligible under this chapter for the following designated health services to a facility in which the physician or an immediate family member has a financial relationship:

(i) Clinical laboratory services;

(ii) Physical therapy services;

(iii) Occupational therapy services;

(iv) Radiology including magnetic resonance imaging, computerized axial tomography, and ultrasound services;

(v) Durable medical equipment and supplies;

(vi) Parenteral and enteral nutrients equipment and supplies;

(vii) Prosthetics, orthotics, and prosthetic devices;

(viii) Home health services;

(ix) Outpatient prescription drugs;

(x) Inpatient and outpatient hospital services;

(xi) Radiation therapy services and supplies.

(b) For purposes of this subsection, "financial relationship" means the relationship between a physician and an entity that includes either:

(i) An ownership or investment interest; or

(ii) A compensation arrangement.

For purposes of this subsection, "compensation arrangement" means an arrangement involving remuneration between a physician, or an immediate family member of a physician, and an entity.

(c) The department is authorized to adopt by rule amendments to 42 U.S.C. 1395 nn enacted after the effective date of this act.

(d) This section shall not apply in any case covered by a general exception specified in 42 U.S.C. Sec. 1395 nn.

(4) Subsections (1) and (2) of this section shall not apply to

(a) a discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter, and

(b) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

~~((4))~~ (5) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW,

but shall not preclude administrative proceedings authorized by chapter 19.68 RCW.

Sec. 2. RCW 18.64.011 and 1989 1st ex.s. c 9 s 412 are each amended to read as follows:

Unless the context clearly requires otherwise, definitions of terms shall be as indicated when used in this chapter.

(1) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(2) "Board" means the Washington state board of pharmacy.

(3) "Drugs" means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection, but not including devices or their component parts or accessories.

(4) "Device" means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, or (b) to affect the structure or any function of the body of man or other animals.

(5) "Nonlegend" or "nonprescription" drugs means any drugs which may be lawfully sold without a prescription.

(6) "Legend drugs" means any drugs which are required by any applicable federal or state law or regulation to be dispensed on prescription only or are restricted to use by practitioners only.

(7) "Controlled substance" means a drug or substance, or an immediate precursor of such drug or substance, so designated under or pursuant to the provisions of chapter 69.50 RCW.

(8) "Prescription" means an order for drugs or devices issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe drugs or devices in the course of his or her professional practice for a legitimate medical purpose.

(9) "Practitioner" means a physician, dentist, veterinarian, nurse, or other person duly authorized by law or rule in the state of Washington to prescribe drugs.

(10) "Pharmacist" means a person duly licensed by the Washington state board of pharmacy to engage in the practice of pharmacy.

(11) "Practice of pharmacy" includes the practice of and responsibility for: interpreting prescription orders; the compounding, dispensing, labeling, administering, and distributing of drugs and devices; the monitoring of drug

therapy and use; the initiating or modifying of drug therapy in accordance with written guidelines or protocols previously established and approved for his or her practice by a practitioner authorized to prescribe drugs; the participating in drug utilization reviews and drug product selection; the proper and safe storing and distributing of drugs and devices and maintenance of proper records thereof; the providing of information on legend drugs which may include, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices.

(12) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

(13) The words "drug" and "devices" shall not include surgical or dental instruments or laboratory materials, gas and oxygen, therapy equipment, X-ray apparatus or therapeutic equipment, their component parts or accessories, or equipment, instruments, apparatus, or contrivances used to render such articles effective in medical, surgical, or dental treatment, or for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes, nor shall the word "drug" include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended, nor medicated feed intended for and used exclusively as a feed for animals other than man.

(14) The word "poison" shall not include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended.

(15) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(16) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(17) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(18) "Compounding" shall be the act of combining two or more ingredients in the preparation of a prescription.

(19) "Wholesaler" shall mean a corporation, individual, or other entity which buys drugs or devices for resale and distribution to corporations, individuals, or entities other than consumers.

(20) "Manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance or device or the packaging or repackaging of such substance or device, or the labeling or relabeling of the commercial container of such substance or device, but does not include the activities of a practitioner who, as an incident to his or her administration or dispensing such substance or device in the course of his or her professional practice, prepares, compounds, packages, or labels such substance or device.

(21) "Manufacturer" shall mean a person, corporation, or other entity engaged in the manufacture of drugs or devices.

(22) "Labeling" shall mean the process of preparing and affixing a label to any drug or device container. The label must include all information required by current federal and state law and pharmacy rules.

(23) "Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

(24) "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.

(25) "Department" means the department of health.

(26) "Secretary" means the secretary of health or the secretary's designee.

(27) "Health care entity" means an organization that provides health care services in a setting that is not otherwise licensed by the state. Health care entity includes a free-standing outpatient surgery center, a free-standing cardiac care center, or a kidney dialysis center. It does not include an individual practitioner's office or a multipractitioner clinic.

NEW SECTION. Sec. 3. A new section is added to chapter 18.64 RCW to read as follows:

(1) In order for a health care entity to purchase, administer, dispense, and deliver legend drugs, the health care entity must be licensed by the department.

(2) In order for a health care entity to purchase, administer, dispense, and deliver controlled substances, the health care entity must annually obtain a license from the department in accordance with the board's rules.

(3) The receipt, administration, dispensing, and delivery of legend drugs or controlled substances by a health care entity must be performed under the supervision or at the direction of a pharmacist.

(4) A health care entity may only administer, dispense, or deliver legend drugs and controlled substances to patients who receive care within the health care entity and in compliance with rules of the board. Nothing in this subsection shall prohibit a practitioner, in carrying out his or her licensed responsibilities within a health care entity, from dispensing or delivering to a patient of the health care entity drugs for that patient's personal use in an amount not to exceed seventy-two hours of usage.

NEW SECTION. Sec. 4. A new section is added to chapter 18.64 RCW to read as follows:

(1) The owner of a health care entity shall pay an original license fee to be determined by the secretary, and annually thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary, for which he or she shall receive a license of location, which shall entitle the owner to purchase legend drugs or controlled substances at the location specified for the

period ending on a date to be determined by the secretary. A declaration of ownership and location filed with the department under this section shall be deemed presumptive evidence of ownership of the health care entity.

(2) The owner shall immediately notify the department of any change of location or ownership in which case a new application and fee shall be submitted.

(3) It shall be the duty of the owner to keep the license of location or the renewal license properly exhibited in the health care entity.

(4) Failure to comply with this section is a misdemeanor and each day that the failure continues is a separate offense.

(5) In the event that a license fee remains unpaid after the date due, no renewal or new license may be issued except upon payment of the license renewal fee and a penalty fee equal to the original license fee.

Sec. 5. RCW 18.64.165 and 1989 1st ex.s. c 9 s 404 and 1989 c 352 s 4 are each reenacted and amended to read as follows:

The board shall have the power to refuse, suspend, or revoke the license of any manufacturer, wholesaler, pharmacy, shopkeeper, itinerant vendor, peddler, poison distributor, health care entity, or precursor chemical distributor upon proof that:

(1) The license was procured through fraud, misrepresentation, or deceit;

(2) The licensee has violated or has permitted any employee to violate any of the laws of this state or the United States relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the board of pharmacy or has been convicted of a felony.

NEW SECTION. **Sec. 6.** A new section is added to chapter 18.64 RCW to read as follows:

Every proprietor or manager of a health care entity shall keep readily available a suitable record of drugs, which shall preserve for a period of not less than two years the record of every drug used at such health care entity. The record shall be maintained either separately from all other records of the health care entity or in such form that the information required is readily retrievable from ordinary business records of the health care entity. All record-keeping requirements for controlled substances must be complied with. Such record of drugs shall be for confidential use in the health care entity, only. The record of drugs shall be open for inspection by the board of pharmacy, who is authorized to enforce chapter 18.64, 69.41, or 69.50 RCW.

Sec. 7. RCW 18.64.255 and 1984 c 153 s 14 are each amended to read as follows:

Nothing in this chapter shall operate in any manner:

(1) To restrict the scope of authorized practice of any practitioner other than a pharmacist, duly licensed as such under the laws of this state. However, a

health care entity shall comply with all state and federal laws and rules relating to the dispensing of drugs and the practice of pharmacy; or

(2) In the absence of the pharmacist from the hospital pharmacy, to prohibit a registered nurse designated by the hospital and the responsible pharmacist from obtaining from the hospital pharmacy such drugs as are needed in an emergency: PROVIDED, That proper record is kept of such emergency, including the date, time, name of prescriber, the name of the nurse obtaining the drugs, and a list of what drugs and quantities of same were obtained; or

(3) To prevent shopkeepers, itinerant vendors, peddlers, or salesmen from dealing in and selling nonprescription drugs, if such drugs are sold in the original packages of the manufacturer, or in packages put up by a licensed pharmacist in the manner provided by the state board of pharmacy, if such shopkeeper, itinerant vendor, salesman, or peddler shall have obtained a registration.

Passed the House April 20, 1995.

Passed the Senate April 11, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 320

[Substitute House Bill 1273]

INDIAN TRIBES—REFUND OF MOTOR VEHICLE AND SPECIAL FUEL TAXES TO

AN ACT Relating to refunding motor vehicle fuel and special fuel taxes to Indian tribes; adding a new section to chapter 82.36 RCW; adding a new section to chapter 82.38 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 recognizes that certain Indian tribes located on reservations within this state dispute the authority of the state to impose a tax upon the tribe, or upon tribal members, based upon the distribution, sale, or other transfer of motor vehicle and other fuels to the tribe or its members when that distribution, sale, or other transfer takes place upon that tribe's reservation. While the legislature believes it has the authority to impose state motor vehicle and other fuel taxes under such circumstances, it also recognizes that all of the state citizens may benefit from resolution of these disputes between the respective governments.

NEW SECTION. Sec. 2. A new section is added to chapter 82.36 RCW to read as follows:

The department of licensing may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding the imposition, collection, and use of this state's motor vehicle fuel tax, or the budgeting or use of moneys in lieu thereof, upon terms substantially the same as those in the consent decree entered by the federal district court (Eastern District

of Washington) in *Confederated Tribes of the Colville Reservation v. DOL, et al.*, District Court No. *CY-92-248-JLO*.

NEW SECTION. Sec. 3. A new section is added to chapter 82.38 RCW to read as follows:

The department of licensing may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding the imposition, collection, and use of this state's special fuel tax, or the hudgeting or use of moneys in lieu thereof, upon terms substantially the same as those in the consent decree entered by the federal district court (Eastern District of Washington) in *Confederated Tribes of the Colville Reservation v. DOL, et al.*, District Court No. *CY-92-248-JLO*.

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 April 19, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 321

[Engrossed Substitute House Bill 1298]

OPIATE SUBSTITUTION TREATMENT

AN ACT Relating to methadone treatment; and amending RCW 70.96A.400, 70.96A.410, and 70.96A.420.

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

Sec. 1. RCW 70.96A.400 and 1989 c 270 s 20 are each amended to read as follows:

The state of Washington declares that there is no fundamental right to ~~((methadone))~~ opiate substitution treatment. The state of Washington further declares that while methadone ~~((is an))~~ and other like pharmacological drugs, used in the treatment of opiate dependency are addictive substances, that ~~((it))~~ they nevertheless ((has)) have several legal, important, and justified uses and that one of ~~((its))~~ their appropriate and legal uses is, in conjunction with other required therapeutic procedures, in the treatment of persons addicted to or habituated to opioids.

Because methadone ~~((is))~~ and other like pharmacological drugs, used in the treatment of opiate dependency are addictive and ((is)) are listed as a schedule II controlled substance in chapter 69.50 RCW, the state of Washington and authorizing counties on behalf of their citizens have the legal obligation and right

to regulate the use of ~~((methadone))~~ opiate substitution treatment. The state of Washington declares its authority to control and regulate carefully, in cooperation with the authorizing counties, all clinical uses of methadone and other pharmacological drugs used in the treatment of ~~((opium))~~ opiate addiction.

Further, the state declares that the primary goal of ~~((methadone))~~ opiate substitution treatment is ~~((drug-free-living))~~ total abstinence from chemical dependency for the individuals who participate in the treatment program. The state recognizes that a small percentage of persons who participate in opiate substitute treatment programs require treatment for an extended period of time. Opiate substitution treatment programs shall provide a comprehensive transition program to eliminate chemical dependency; including opiate and opiate substitute addiction of program participants.

Sec. 2. RCW 70.96A.410 and 1989 c 270 s 21 are each amended to read as follows:

(1) A county legislative authority may prohibit ~~((methadone))~~ opiate substitution treatment in that county. The department shall not certify ~~((a methadone))~~ an opiate substitution treatment program in a county where the county legislative authority has prohibited ~~((methadone))~~ opiate substitution treatment. If a county legislative authority authorizes ~~((methadone))~~ opiate substitution treatment programs, it shall limit by ordinance the number of ~~((methadone))~~ opiate substitution treatment programs operating in that county by limiting the number of licenses granted in that county. If a county has authorized ~~((methadone))~~ opiate substitution treatment programs in that county, it shall only license ~~((methadone))~~ opiate substitution treatment programs that comply with the department's operating and treatment standards under this section and RCW 70.96A.420. A county that authorizes ~~((methadone))~~ opiate substitution treatment may operate the programs directly or through a local health department or health district or it may authorize certified ~~((methadone))~~ opiate substitution treatment programs that the county licenses to provide the services within the county. Counties shall monitor ~~((methadone))~~ opiate substitution treatment programs for compliance with the department's operating and treatment regulations under this section and RCW 70.96A.420.

(2) A county that authorizes ~~((methadone))~~ opiate substitution treatment programs shall develop and enact by ordinance licensing standards, consistent with this chapter and the operating and treatment standards adopted under this chapter, that govern the application for, issuance of, renewal of, and revocation of the licenses. Certified programs existing before May 18, 1987, applying for renewal of licensure in subsequent years, that maintain certification and meet all other requirements for licensure, shall be given preference.

(3) In certifying programs, the department shall not discriminate against ~~((a methadone))~~ an opiate substitution treatment program on the basis of its corporate structure. In licensing programs, the county shall not discriminate against ~~((a methadone))~~ an opiate substitution treatment program on the basis of its corporate structure.

(4) A program applying for certification from the department and a program applying for a contract from a state agency that has been denied the certification or contract shall be provided with a written notice specifying the rationale and reasons for the denial. A program applying for a license or a contract from a county that has been denied the license or contract shall be provided with a written notice specifying the rationale and reasons for the denial.

(5) A license is effective for one calendar year from the date of issuance. The license shall be renewed in accordance with the provisions of this section for initial approval (~~and in accordance with~~); the goals for treatment programs under RCW 70.96A.400; the standards set forth in RCW 70.96A.420; and the rules adopted by the secretary.

(6) For the purpose of this chapter, opiate substitution treatment means dispensing an opiate substitution drug approved by the Federal Drug Administration for the treatment of opiate addiction and providing a comprehensive range of medical and rehabilitative services.

Sec. 3. RCW 70.96A.420 and 1989 c 270 s 22 are each amended to read as follows:

(1) The department, in consultation with (~~methadone~~) opiate substitution treatment service providers and counties authorizing (~~methadone~~) opiate substitution treatment programs, shall establish state-wide treatment standards for (~~methadone~~) opiate substitution treatment programs. The department and counties that authorize (~~methadone~~) opiate substitution treatment programs shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter (~~and the treatment standard authorized by this chapter~~). A (~~methadone~~) opiate substitution treatment program shall not have a caseload in excess of three hundred fifty persons.

(2) The department, in consultation with (~~methadone~~) opiate substitution treatment programs and counties authorizing (~~methadone~~) opiate substitution treatment programs, shall establish state-wide operating standards for (~~methadone~~) opiate substitution treatment programs. The department and counties that authorize (~~methadone~~) opiate substitution treatment programs shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and authorizing counties to monitor certified and licensed (~~methadone~~) opiate substitution treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the (~~methadone~~) opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located.

(3) The department shall establish criteria for evaluating the compliance of opiate substitute treatment programs with the goals and standards established under this chapter. As a condition of certification, opiate substitution programs shall submit an annual report to the department and county legislative authority,

including data as specified by the department necessary for outcome analysis. The department shall analyze and evaluate the data submitted by each treatment program and take corrective action where necessary to ensure compliance with the goals and standards enumerated under this chapter. Before January 1 of each year, the department shall submit an annual report to the legislature, including the outcome analysis of each treatment program.

Passed the House April 19, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 322

[Substitute House Bill 1350]

UNEMPLOYMENT COMPENSATION—VOLUNTARY EMPLOYER CONTRIBUTIONS

AN ACT Relating to authorizing voluntary contributions for unemployment insurance; adding a new section to chapter 50.29 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 50.29 RCW to read as follows:

(1) Beginning with contributions assessed for rate year 1996, a qualified employer's contribution rate determined under RCW 50.29.025 may be modified as follows:

(a) Subject to the limitations of this subsection, an employer may make a voluntary contribution of an amount equal to part or all of the benefits charged to the employer's account during the two years most recently ended on June 30th that were used for the purpose of computing the employer's contribution rate. On receiving timely payment of a voluntary contribution, plus a surcharge of ten percent of the amount of the voluntary contribution, the commissioner shall cancel the benefits equal to the amount of the voluntary contribution, excluding the surcharge, and compute a new benefit ratio for the employer. The employer shall then be assigned the contribution rate applicable to the rate class within which the recomputed benefit ratio is included. The minimum amount of a voluntary contribution, excluding the surcharge, must be an amount that will result in a recomputed benefit ratio that is in a rate class at least two rate classes lower than the rate class that included the employer's original benefit ratio.

(b) Payment of a voluntary contribution is considered timely if received by the department during the period beginning on the date of mailing to the employer the notice of contribution rate required under this title for the rate year for which the employer is seeking a modification of his or her contribution rate and ending on February 15th of that rate year.

(c) A benefit ratio may not be recomputed nor a contribution rate be reduced under this section as a result of a voluntary contribution received after the payment period prescribed in (b) of this subsection.

(2) This section does not apply to any employer who has not had an increase of at least six rate classes from the previous tax rate year.

NEW SECTION. Sec. 2. 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.

Passed the House April 19, 1995.

Passed the Senate April 5, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 323

[Substitute House Bill 1398]

ACUPUNCTURIST LICENSING

AN ACT Relating to acupuncture; amending RCW 4.24.240, 4.24.290, 7.70.020, 18.06.010, 18.06.020, 18.06.045, 18.06.080, 18.06.090, 18.06.110, 18.06.120, 18.06.130, 18.06.140, 18.06.190, 18.06.200, and 18.120.020; and reenacting and amending RCW 18.130.040.

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

Sec. 1. RCW 4.24.240 and 1985 c 326 s 25 are each amended to read as follows:

(1)(a) A person licensed by this state to provide health care or related services, including, but not limited to, a (~~certified~~) licensed acupuncturist, a physician, osteopathic physician, dentist, nurse, optometrist, (~~podiatrist~~) podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, including, in the event such person is deceased, his or her estate or personal representative;

(b) An employee or agent of a person described in subparagraph (a) of this subsection, acting in the course and scope of his or her employment, including, in the event such employee or agent is deceased, his or her estate or personal representative; or

(c) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subparagraph (a) of this subsection, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, trustee, employee, or agent thereof acting in the course and scope of his or her employment, including in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative;

shall be immune from civil action for damages arising out of the good faith performance of their duties on such committees, where such actions are being brought by or on behalf of the person who is being evaluated.

(2) No member, employee, staff person, or investigator of a professional review committee shall be liable in a civil action as a result of acts or omissions made in good faith on behalf of the committee; nor shall any person be so liable for filing charges with or supplying information or testimony in good faith to any professional review committee; nor shall a member, employee, staff person, or investigator of a professional society, of a professional examining or licensing board, of a professional disciplinary board, of a governing board of any institution, or of any employer of professionals be so liable for good faith acts or omissions made in full or partial reliance on recommendations or decisions of a professional review committee or examining board.

Sec. 2. RCW 4.24.290 and 1994 sp.s. c 9 s 702 are each amended to read as follows:

In any civil action for damages based on professional negligence against a hospital which is licensed by the state of Washington or against the personnel of any such hospital, or against a member of the healing arts including, but not limited to, an acupuncturist (~~(certified)~~) licensed under chapter 18.06 RCW, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, a chiropractor licensed under chapter 18.25 RCW, a dentist licensed under chapter 18.32 RCW, a podiatric physician and surgeon licensed under chapter 18.22 RCW, or a nurse licensed under chapter 18.79 RCW, the plaintiff in order to prevail shall be required to prove by a preponderance of the evidence that the defendant or defendants failed to exercise that degree of skill, care, and learning possessed at that time by other persons in the same profession, and that as a proximate result of such failure the plaintiff suffered damages, but in no event shall the provisions of this section apply to an action based on the failure to obtain the informed consent of a patient.

Sec. 3. RCW 7.70.020 and 1985 c 326 s 27 are each amended to read as follows:

As used in this chapter "health care provider" means either:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a (~~(certified)~~) licensed acupuncturist, a physician, osteopathic physician, dentist, nurse, optometrist, (~~(podiatrist)~~) podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, midwife, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his or her estate or personal representative;

(2) An employee or agent of a person described in part (1) above, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his or her estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in part (1) above, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment, including in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative.

Sec. 4. RCW 18.06.010 and 1992 c 110 s 1 are each amended to read as follows:

The following terms in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

(1) "Acupuncture" means a health care service based on ~~((a-traditional))~~ an Oriental system of medical theory utilizing Oriental diagnosis and treatment to promote health and treat organic or functional disorders by treating specific acupuncture points or meridians. Acupuncture includes ~~((but is not necessarily limited to))~~ the following techniques:

(a) Use of acupuncture needles to stimulate acupuncture points and meridians;

(b) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;

(c) Moxibustion;

(d) Acupressure;

(e) Cupping;

(f) Dermal friction technique;

(g) Infra-red;

(h) Sonopuncture;

(i) Laserpuncture;

(j) ~~((Dietary advice based on traditional Oriental medical theory; and ~~(k))~~))~~ Point injection therapy (aquapuncture); and

(k) Dietary advice based on Oriental medical theory provided in conjunction with techniques under (a) through (j) of this subsection.

(2) "Acupuncturist" means a person ~~((certified))~~ licensed under this chapter.

(3) "Department" means the department of health.

(4) "Secretary" means the secretary of health or the secretary's designee.

Sec. 5. RCW 18.06.020 and 1991 c 3 s 5 are each amended to read as follows:

(1) No one may hold themselves out to the public as an acupuncturist or ~~((certified))~~ licensed acupuncturist or any derivative thereof which is intended to or is likely to lead the public to believe such a person is an acupuncturist or ~~((certified))~~ licensed acupuncturist unless ~~((certified))~~ licensed as provided for in this chapter.

(2) A person may not practice acupuncture if the person is not licensed under this chapter.

(3) No one may use any configuration of letters after their name (including Ac.) which indicates a degree or formal training in acupuncture unless ~~((certified))~~ licensed as provided for in this chapter.

~~((3))~~ (4) The secretary may by rule proscribe or regulate advertising and other forms of patient solicitation which are likely to mislead or deceive the public as to whether someone is ~~((certified))~~ licensed under this chapter.

Sec. 6. RCW 18.06.045 and 1992 c 110 s 2 are each amended to read as follows:

Nothing in this chapter shall be construed to prohibit or restrict:

(1) The practice ~~((by an individual licensed, certified, or registered))~~ by an individual credentialed under the laws of this state and performing services within such individual's authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor;

(4) The practice of acupuncture by any person ~~((licensed or certified))~~ credentialed to perform acupuncture in any other jurisdiction where such person is doing so in the course of regular instruction of a school of acupuncture approved by the secretary or in an educational seminar by a professional organization of acupuncture, provided that in the latter case, the practice is supervised directly by a person ~~((certified pursuant to))~~ licensed under this chapter or licensed under any other healing art whose scope of practice includes acupuncture.

Sec. 7. RCW 18.06.080 and 1994 sp.s. c 9 s 502 are each amended to read as follows:

(1) The secretary is hereby authorized and empowered to execute the provisions of this chapter and shall offer examinations in acupuncture at least twice a year at such times and places as the secretary may select. The examination shall be a written examination and may include a practical examination.

(2) The secretary shall develop or approve a ~~((certification))~~ licensure examination in the subjects that the secretary determines are within the scope of and commensurate with the work performed by ~~((certified))~~ licensed acupuncturists and shall include but not necessarily be limited to anatomy, physiology, microbiology, biochemistry, pathology, hygiene, and acupuncture. All application papers shall be deposited with the secretary and there retained for at least one year, when they may be destroyed.

(3) If the examination is successfully passed, the secretary shall confer on such candidate the title of ~~((Certified))~~ Licensed Acupuncturist.

(4) The secretary may appoint members of the profession to serve in an ad hoc advisory capacity to the secretary in carrying out this chapter. The members will serve for designated times and provide advice on matters specifically identified and requested by the secretary. The members shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses under RCW 43.03.040 and 43.03.060.

(5) The secretary, ad hoc committee members, or individuals acting in their behalf are immune from suit in a civil action based on any certification or disciplinary proceedings or other official acts performed in the course of their duties.

Sec. 8. RCW 18.06.090 and 1985 c 326 s 9 are each amended to read as follows:

Before ~~((certification))~~ licensure, each applicant shall demonstrate sufficient fluency in reading, speaking, and understanding the English language to enable the applicant to communicate with other health care providers and patients concerning health care problems and treatment.

Sec. 9. RCW 18.06.110 and 1991 c 3 s 11 are each amended to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of ~~((certificates))~~ licenses, and the disciplining of ~~((certificate))~~ license holders under this chapter. The secretary shall be the disciplining authority under this chapter.

Sec. 10. RCW 18.06.120 and 1992 c 110 s 4 are each amended to read as follows:

(1) Every person ~~((certified))~~ licensed in acupuncture shall register with the secretary annually and pay an annual renewal ~~((registration))~~ fee determined by the secretary as provided in RCW 43.70.250 on or before the ~~((certificate))~~ license holder's birth anniversary date. The ~~((certificate))~~ license of the person shall be renewed for a period of one year or longer in the discretion of the secretary. A person whose practice is exclusively out-of-state or who is on sabbatical shall be granted an inactive ~~((certification))~~ licensure status and pay a reduced ~~((registration))~~ fee. The reduced fee shall be set by the secretary under RCW 43.70.250.

(2) Any failure to register and pay the annual renewal ~~((registration))~~ fee shall render the ~~((certificate))~~ license invalid. The ~~((certificate))~~ license shall be reinstated upon: (a) Written application to the secretary; (b) payment to the state of a penalty fee determined by the secretary as provided in RCW 43.70.250; and (c) payment to the state of all delinquent annual ~~((certificate))~~ license renewal fees.

(3) Any person who fails to renew his or her ~~((certification))~~ license for a period of three years shall not be entitled to renew ~~((such certification))~~ the licensure under this section. Such person, in order to obtain a ~~((certification))~~ licensure in acupuncture in this state, shall file a new application under this

chapter, along with the required fee, and shall meet examination or continuing education requirements as the secretary, by rule, provides.

(4) All fees collected under this section and RCW 18.06.070 shall be credited to the health professions account as required under RCW 43.70.320.

Sec. 11. RCW 18.06.130 and 1991 c 3 s 13 are each amended to read as follows:

The secretary shall develop a form to be used by an acupuncturist to inform the patient of the acupuncturist's scope of practice and qualifications. All ~~((certificate))~~ license holders shall bring the form to the attention of the patients in whatever manner the secretary, by rule, provides.

Sec. 12. RCW 18.06.140 and 1991 c 3 s 14 are each amended to read as follows:

Every ~~((certified))~~ licensed acupuncturist shall develop a written plan for consultation, emergency transfer, and referral to other health care practitioners operating within the scope of their authorized practices. The written plan shall be submitted with the initial application for ~~((certification))~~ licensure as well as annually thereafter with the ~~((certificate))~~ license renewal fee to the department. The department may withhold ~~((certification))~~ licensure or renewal of ~~((certification))~~ licensure if the plan fails to meet the standards contained in rules ~~((promulgated))~~ adopted by the secretary.

When the acupuncturist sees patients with potentially serious disorders such as cardiac conditions, acute abdominal symptoms, and such other conditions, the acupuncturist shall immediately request a consultation or recent written diagnosis from a physician licensed under chapter 18.71 or 18.57 RCW. In the event that the patient with the disorder refuses to authorize such consultation or provide a recent diagnosis from such physician, acupuncture treatment shall not be continued.

Sec. 13. RCW 18.06.190 and 1991 c 3 s 18 are each amended to read as follows:

The secretary may ~~((certify))~~ license a person without examination if such person is ~~((licensed or certified))~~ credentialed as an acupuncturist in another jurisdiction if, in the secretary's judgment, the requirements of that jurisdiction are equivalent to or greater than those of Washington state.

Sec. 14. RCW 18.06.200 and 1985 c 326 s 20 are each amended to read as follows:

Nothing in this chapter may be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person ~~((registered or certified))~~ licensed under this chapter.

Sec. 15. RCW 18.120.020 and 1994 sp.s. c 9 s 718 are each amended to read as follows:

The definitions contained in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant group" includes any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(4) "Health professions" means and includes the following health and health-related licensed or regulated professions and occupations: Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; dispensing opticians under chapter 18.34 RCW; hearing aids under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW; nursing home administration under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ocularists under chapter 18.55 RCW; osteopathy and osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters 18.71 and 18.71A RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses under chapter 18.79 RCW; psychologists under chapter 18.83 RCW; registered nurses under chapter 18.79 RCW; occupational therapists licensed under chapter 18.59 RCW; respiratory care practitioners certified under chapter 18.89 RCW; veterinarians and animal technicians under chapter 18.92 RCW; health care assistants under chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW; acupuncturists (~~certified~~) licensed under chapter 18.06 RCW; persons registered or certified under chapter 18.19 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; and nursing assistants registered or certified under chapter 18.88A RCW.

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and

house of representatives to consider proposed legislation to regulate health professions not previously regulated.

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed health professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency.

Sec. 16. RCW 18.130.040 and 1994 sp.s. c 9 s 603 and 1994 c 17 s 19 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions 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~~) licensed under chapter 18.06 RCW;
 - (viii) Radiologic technologists certified and x-ray technicians registered 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 under chapter 18.52C RCW;
 - (xii) Nursing assistants registered or certified under chapter 18.79 RCW;
 - (xiii) Health care assistants certified under chapter 18.135 RCW;
 - (xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;
 - (xv) Sex offender treatment providers certified under chapter 18.155 RCW;
- and
- (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The podiatric medical board as established in chapter 18.22 RCW;
- (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
- (iii) The dental quality assurance commission as established in chapter 18.32 RCW;
- (iv) The board on fitting and dispensing of hearing aids as established in chapter 18.35 RCW;
- (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
- (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
- (vii) 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;
- (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
- (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
- (x) The board of physical therapy as established in chapter 18.74 RCW;
- (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
- (xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;
- (xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;
- (xiv) 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. 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.

Passed the House April 20, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 324

[Substitute House Bill 1401]

SHARING OF JUVENILE RECORDS WITH SCHOOLS

AN ACT Relating to sharing of juvenile records among schools and other agencies; amending RCW 28A.225.330; and reenacting and amending RCW 13.40.215.

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

Sec. 1. RCW 13.40.215 and 1994 c 129 s 6 and 1994 c 78 s 1 are each reenacted and 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 thirty 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, 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; and

(iii) The approved private schools and the common school district board of directors of the district in which the juvenile intends to reside or the approved private school or public school district in which the juvenile last attended school, whichever is appropriate, except when it has been determined by the department that the juvenile is twenty-one years old; is not required to return to school under chapter 28A.225 RCW; or will be in the community for less than seven consecutive days on approved leave and will not be attending school during that time.

(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.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical furloughs.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2)(a) If a juvenile found to have committed a violent offense, 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 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) Upon discharge, parole, or other authorized leave or release, a convicted juvenile sex offender shall not attend a public elementary, middle, or high school that is attended by a victim of the sex offender. The parents or legal guardians of the convicted juvenile sex offender shall be responsible for transportation or other costs associated with or required by the sex offender's change in school that otherwise would be paid by a school district. Upon discharge, parole, or other authorized leave or release of a convicted juvenile sex offender, the secretary shall send written notice of the discharge, parole, or other authorized leave or release and the requirements of this subsection to the common school district board of directors of the district in which the sex offender intends to reside or the district in which the sex offender last attended school, whichever is appropriate.

(6) 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.

Sec. 2. RCW 28A.225.330 and 1994 c 304 s 2 are each amended to read as follows:

(1) When enrolling a student who has attended school in another school district, the school enrolling the student may request the parent and the student to briefly indicate in writing whether or not the student has:

- (a) Any history of placement in special educational programs;
- (b) Any past, current, or pending disciplinary action;
- (c) Any history of violent behavior;
- (d) Any unpaid fines or fees imposed by other schools; and
- (e) Any health conditions affecting the student's educational needs.

(2) The school enrolling the student shall request the school the student previously attended to send the student's permanent record including records of disciplinary action. If the student has not paid a fine or fee under RCW 28A.635.060, the school may withhold the student's official transcript, but shall transmit information about the student's academic performance, special placement, and records of disciplinary action. If the official transcript is not sent due to unpaid fees or fines, the enrolling school shall notify both the student and parent or guardian that the official transcript will not be sent until the obligation is met, and failure to have an official transcript may result in exclusion from extracurricular activities or failure to graduate.

(3) If information is requested under subsection (2) of this section, the information shall be transmitted within two school days after receiving the request and the records shall be sent as soon as possible.

(4) Any school district or district employee who releases the information in compliance with federal and state law is immune from civil liability for damages unless it is shown that the school district or district employee acted with gross negligence or in bad faith.

Passed the House April 20, 1995.

Passed the Senate April 14, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 325

[House Bill 1495]

TIMBER EXCISE TAX—SMALL HARVESTER OPTION EXPANDED

AN ACT Relating to the timber excise tax small harvester option; amending RCW 84.33.073; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 84.33.073 and 1987 c 166 s 2 are each amended to read as follows:

As used in RCW 84.33.073 and 84.33.074, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Small harvester" means every person who from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount (~~not exceeding five hundred thousand board feet in a calendar quarter and~~) not exceeding ((one)) two million board feet in a calendar year: PROVIDED, That whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. "Small harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include harvesters of Christmas trees.

(2) "Timber" means forest trees, standing or down, on privately or publicly owned land.

(3) "Harvesting and marketing costs" means only those costs directly associated with harvesting the timber from the land and delivering it to the buyer and may include the costs of disposing of logging residues but it does not include any other costs which are not directly and exclusively related to harvesting and marketing of the timber such as costs of permanent roads or costs of reforesting the land following harvest.

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, 1995.

Passed the House March 13, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 326

[Substitute House Bill 1497]

ELECTRONIC PUBLIC RECORDS PRESERVATION

AN ACT Relating to the preservation of public electronic records; reenacting and amending RCW 40.14.020; and creating a new section.

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

Sec. 1. RCW 40.14.020 and 1991 c 237 s 4 and 1991 c 184 s 1 are each reenacted and amended to read as follows:

All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to insure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state. The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities:

- (1) To manage the archives of the state of Washington;
- (2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation;
- (3) To inspect, inventory, catalog, and arrange retention and transfer schedules on all record files of all state departments and other agencies of state government;
- (4) To insure the maintenance and security of all state public records and to establish safeguards against unauthorized removal or destruction;
- (5) To establish and operate such state record centers as may from time to time be authorized by appropriation, for the purpose of preserving, servicing, screening and protecting all state public records which must be preserved temporarily or permanently, but which need not be retained in office space and equipment;
- (6) To adopt rules under chapter 34.05 RCW:
 - (a) Setting standards for the durability and permanence of public records maintained by state and local agencies;

(b) Governing procedures for the creation, maintenance, transmission, cataloging, indexing, storage, or reproduction of photographic, optical, electronic, or other images of public documents or records in a manner consistent with current standards, policies, and procedures of the department of information services for the acquisition of information technology;

(c) Governing the accuracy and durability of, and facilitating access to, photographic, optical, electronic, or other images used as public records; or

(d) To carry out any other provision of this chapter;

(7) To gather and disseminate to interested agencies information on all phases of records management and current practices, methods, procedures, techniques, and devices for efficient and economical management and preservation of records;

(8) To operate a central microfilming bureau which will microfilm, at cost, records approved for filming by the head of the office of origin and the archivist; to approve microfilming projects undertaken by state departments and all other agencies of state government; and to maintain proper standards for this work;
(~~and~~)

(9) To maintain necessary facilities for the review of records approved for destruction and for their economical disposition by sale or burning; directly to supervise such destruction of public records as shall be authorized by the terms of this chapter;

(10) To assist and train state and local agencies in the proper methods of creating, maintaining, cataloging, indexing, transmitting, storing, and reproducing photographic, optical, electronic, or other images used as public records.

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, 1995, in the omnibus appropriations act, this act shall be null and void.

Passed the House April 20, 1995.

Passed the Senate April 12, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 327

[Substitute House Bill 1547]

LONGSHORE AND HARBOR WORKERS ASSIGNED RISK PLAN EXTENDED

AN ACT Relating to longshore and harbor workers' compensation act insurance; amending RCW 48.22.072; amending 1993 c 177 s 3 and 1992 c 209 s 6 (uncodified); and declaring an emergency.

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

***Sec. 1.** *RCW 48.22.072 and 1993 c 177 s 2 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(~~(, 1994 and 1995)~~) of each year,

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. 1 was vetoed. See message at end of chapter.

Sec. 2. 1993 c 177 s 3 & 1992 c 209 s 6 (uncodified) are each amended to read as follows:

This act shall expire on July 1, ((+1995)) 1997.

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 8, 1995.

Passed the Senate April 21, 1995.

Approved by the Governor May 11, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 11, 1995.

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

"I am returning herewith, without my approval as to section 1, Substitute House Bill No. 1547 entitled:

"AN ACT Relating to longshore and harbor workers;"

This legislation extends the Temporary Washington State/United States Longshore and Harbor Workers Assigned Risk Plan to July 1, 1997.

Section 1 of this bill refers to the reporting obligations of the advisory committee which assists in overseeing the plan. However, I have already signed Engrossed Substitute House Bill No. 1107 which eliminates numerous state boards, commissions, and committees, including the committee referenced in section 1 of Substitute House Bill No. 1547.

I am nonetheless committed to the fair and effective oversight of this plan. In this regard, I am, by separate instrument, directing the Department of Labor and Industries to establish an ad hoc committee to continue in an advisory and reporting role.

For these reasons, I am vetoing section 1 of Substitute House Bill No. 1547.

With the exception of section 1, Substitute House Bill No. 1547 is approved."

CHAPTER 328

[Substitute House Bill 1658]

**WETLANDS—MITIGATION EXEMPTION FOR WETLANDS FILLED
TO PREVENT FLOODING**

AN ACT Relating to the filling or altering of wetlands; and adding a new section to chapter 75.20 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 75.20 RCW to read as follows:

The department may not require mitigation for adverse impacts on fish life or habitat that occurred at the time a wetland was filled, if the wetland was filled under the provisions of RCW 75.20.300.

Passed the House April 20, 1995.

Passed the Senate April 14, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 329

[Substitute House Bill 1673]

PROPERTY TAX DEFERRALS—SENIOR CITIZENS AND DISABLED RETIREES

AN ACT Relating to property tax deferrals for senior citizens and persons retired by reason of physical disability; and amending RCW 84.38.020 and 84.38.030.

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

Sec. 1. RCW 84.38.020 and 1991 c 213 s 1 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) "Claimant" means a person who either elects or is required under RCW ((84.64.030 or) 84.64.050 to defer payment of the special assessments and/or real property taxes accrued on the claimant's residence by filing a declaration to defer as provided by this chapter.

When two or more individuals of a household file or seek to file a declaration to defer, they may determine between them as to who the claimant shall be.

(2) "Department" means the state department of revenue.

(3) "Equity value" means the amount by which the fair market value of a residence as determined from the records of the county assessor exceeds the total amount of any liens or other obligations against the property.

(4) "Real property taxes" means ad valorem property taxes levied on a residence in this state in the preceding calendar year.

(5) "Residence" has the meaning given in RCW 84.36.383, except that a residence includes any additional property up to a total of five acres that comprises the residential parcel if this larger parcel size is required under land use regulations.

(6) "Special assessment" means the charge or obligation imposed by a city, town, county, or other municipal corporation upon property specially benefited by a local improvement, including assessments under chapters 35.44, 36.88, 36.94, 53.08, 54.16, 56.20, 57.16, 86.09, and 87.03 RCW and any other relevant chapter.

~~((5) "Real property taxes" means ad valorem property taxes levied on a residence in this state in the preceding calendar year.))~~

Sec. 2. RCW 84.38.030 and 1991 c 213 s 2 are each amended to read as follows:

A claimant may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of the claimant's equity value in the claimant's residence if the following conditions are met:

(1) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the age and income limits under RCW 84.36.381 and the parcel size limit under RCW 84.36.383.

(2) The claimant must be sixty years of age or older on December 31st of the year in which the deferral 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 a deferral 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.

(3) The claimant must have a combined disposable income, as defined in RCW 84.36.383, of ~~((thirty))~~ thirty-four thousand dollars or less.

~~((3))~~ (4) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. 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. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

~~((4))~~ (5) The claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state in the claimant's equity value: PROVIDED, That if the claimant fails to keep fire and casualty insurance in force to the extent of the state's interest in the claimant's equity value, the amount deferred shall not exceed one hundred percent of the claimant's equity value in the land or lot only.

~~((5))~~ (6) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available.

Passed the House April 20, 1995.
 Passed the Senate April 14, 1995.
 Approved by the Governor May 11, 1995.
 Filed in Office of Secretary of State May 11, 1995.

CHAPTER 330

[Substitute House Bill 1700]

FOREST LANDS—CLASSIFICATION AND CURRENT USE TAXATION OF

AN ACT Relating to current use taxation provisions; amending RCW 84.33.120 and 84.33.140; and declaring an emergency.

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

Sec. 1. RCW 84.33.120 and 1992 c 69 s 1 are each amended to read as follows:

(1) In preparing the assessment rolls as of January 1, 1982, for taxes payable in 1983 and each January 1st thereafter, the assessor shall list each parcel of forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (2) of this section and shall compute the assessed value of the land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. Values for the several grades of bare forest land shall be as follows.

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
1	1	\$141
	2	136
	3	131
	4	95
2	1	118
	2	114
	3	110
	4	80
3	1	93
	2	90
	3	87
	4	66
4	1	70
	2	68
	3	66
	4	52

	1	51
5	2	48
	3	46
	4	31
<hr/>		
	1	26
6	2	25
	3	25
	4	23
<hr/>		
	1	12
7	2	12
	3	11
	4	11
<hr/>		
8		1
<hr/>		

(2) On or before December 31, 1981, the department shall adjust, by rule under chapter 34.05 RCW, the forest land values contained in subsection (f) of this section in accordance with this subsection, and shall certify these adjusted values to the county assessor for his or her use in preparing the assessment rolls as of January 1, 1982. For the adjustment to be made on or before December 31, 1981, for use in the 1982 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1976, and June 30, 1981, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1975, and June 30, 1980, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(c) Adjust the forest land values contained in subsection (1) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

For the adjustments to be made on or before December 31, 1982, and each succeeding year thereafter, the same procedure shall be followed as described in this subsection utilizing harvester excise tax returns filed under RCW 82.04.291 and this chapter except that this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(3) In preparing the assessment roll for 1972 and each year thereafter, the assessor shall enter as the true and fair value of each parcel of forest land the appropriate grade value certified to him or her by the department of revenue, and

he or she shall compute the assessed value of such land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. In preparing the assessment roll for 1975 and each year thereafter, the assessor shall assess and value as classified forest land all forest land that is not then designated pursuant to RCW 84.33.120(4) or 84.33.130 and shall make a notation of such classification upon the assessment and tax rolls. On or before January 15 of the first year in which such notation is made, the assessor shall mail notice by certified mail to the owner that such land has been classified as forest land and is subject to the compensating tax imposed by this section. If the owner desires not to have such land assessed and valued as classified forest land, he or she shall give the assessor written notice thereof on or before March 31 of such year and the assessor shall remove from the assessment and tax rolls the classification notation entered pursuant to this subsection, and shall thereafter assess and value such land in the manner provided by law other than this chapter 84.33 RCW.

(4) In any year commencing with 1972, an owner of land which is assessed and valued by the assessor other than pursuant to the procedures set forth in RCW 84.33.110 and this section, and which has, in the immediately preceding year, been assessed and valued by the assessor as forest land, may appeal to the county board of equalization by filing an application with the board in the manner prescribed in subsection (2) of RCW 84.33.130. The county board shall afford the applicant an opportunity to be heard if the application so requests and shall act upon the application in the manner prescribed in subsection (3) of RCW 84.33.130.

(5) Land that has been assessed and valued as classified forest land as of any year commencing with 1975 assessment year or earlier shall continue to be so assessed and valued until removal of classification by the assessor only upon the occurrence of one of the following events:

(a) Receipt of notice from the owner to remove such land from classification as forest land;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that, because of actions taken by the owner, such land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from classification if a governmental agency, organization, or other recipient identified in subsection (9) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in classified forest land by means of a transaction that qualifies for an exemption under subsection (9) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the classified land

as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(d) Determination that a higher and better use exists for such land than growing and harvesting timber after giving the owner written notice and an opportunity to be heard;

(e) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land classification continuance~~((f))~~, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW ~~((82.45.120, as now or hereafter amended))~~ 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (7) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (7) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals.

The assessor shall remove classification pursuant to ~~((subsections))~~ (c) or (d) ~~((above))~~ of this subsection prior to September 30 of the year prior to the assessment year for which termination of classification is to be effective. Removal of classification as forest land upon occurrence of ~~((subsection))~~ (a), (b), (d), or (e) ~~((above))~~ of this subsection shall apply only to the land affected, and upon occurrence of ~~((subsection))~~ (c) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber: PROVIDED, That any remaining classified forest land meets necessary definitions of forest land pursuant to RCW 84.33.100 as now or hereafter amended.

(6) Within thirty days after such removal of classification as forest land, the assessor shall notify the owner in writing setting forth the reasons for such removal. The owner of such land shall thereupon have the right to apply for designation of such land as forest land pursuant to subsection (4) of this section or RCW 84.33.130. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(7) Unless the owner successfully applies for designation of such land or unless the removal is reversed on appeal, notation of removal from classification shall immediately be made upon the assessment and tax rolls, and commencing on January 1 of the year following the year in which the assessor made such notation, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsections (5)(e) and (9) of this section and unless the assessor shall not have mailed notice of

classification pursuant to subsection (3) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to ~~((+-(a)))~~ the difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by ~~((b))~~ a number, in no event greater than ten, equal to the number of years, commencing with assessment year 1975, for which such land was assessed and valued as forest land.

(8) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from classification as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(9) The compensating tax specified in subsection (7) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(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) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW; PROVIDED, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (7) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes.

(10) With respect to any land that has been designated prior to May 6, 1974, pursuant to RCW 84.33.120(4) or 84.33.130, the assessor may, prior to January 1, 1975, on his or her own motion or pursuant to petition by the owner, change, without imposition of the compensating tax provided under RCW 84.33.140, the status of such designated land to classified forest land.

Sec. 2. RCW 84.33.140 and 1992 c 69 s 2 are each amended to read as follows:

(1) When land has been designated as forest land pursuant to RCW 84.33.120(4) or 84.33.130, a notation of such designation shall be made each year upon the assessment and tax rolls, a copy of the notice of approval together with the legal description or assessor's tax lot numbers for such land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and such land shall be graded and valued pursuant to RCW 84.33.110 and 84.33.120 until removal of such designation by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove such designation;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land designation continuance(~~((f))~~), except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW (~~82.45.120, as now or hereafter amended~~) 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (3) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (3) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) Such land is no longer primarily devoted to and used for growing and harvesting timber(~~(:)~~). However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (5) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in designated forest land by means of a transaction that qualifies for an exemption under subsection (5) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in

which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) ~~((such))~~ The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or any applicable regulations thereunder~~((;))~~; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

Removal of designation upon occurrence of any of ~~((subsections))~~ (a) through (c) ~~((above))~~ of this subsection shall apply only to the land affected, and upon occurrence of ~~((subsection))~~ (d) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber, without regard to other land that may have been included in the same application and approval for designation: PROVIDED, That any remaining designated forest land meets necessary definitions of forest land pursuant to RCW 84.33.100 as now or hereafter amended.

(2) Within thirty days after such removal of designation of forest land, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(3) Unless the removal is reversed on appeal a copy of the notice of removal with notation of the action, if any, upon appeal, together with the legal description or assessor's tax lot numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and commencing on January 1 of the year following the year in which the assessor mailed such notice, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsection (5) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to ~~((+((a))))~~ the difference between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by ~~((((b))))~~ a number, in no event greater than ten, equal to the number of years for which such land was designated as forest land.

(4) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or

responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(5) The compensating tax specified in subsection (3) of this section shall not be imposed if the removal of designation pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(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) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: PROVIDED, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (3) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes.

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, 1995.

Passed the Senate April 13, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 331

[Substitute House Bill 1722]

UTILITIES AND TRANSPORTATION COMMISSION—DESIGNATION OF EMPLOYEES TO HEAR AND ADJUDICATE PROCEEDINGS

AN ACT Relating to hearings conducted by the utilities and transportation commission; amending RCW 34.12.020, 81.01.050 [80.01.050], and 80.01.060; and repealing RCW 34.12.042.

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

Sec. 1. RCW 34.12.020 and 1994 c 257 s 22 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 growth ~~((planning))~~ management hearings boards, the utilities and transportation commission, 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 Washington personnel resources board, the public employment relations commission, the personnel appeals board, and the board of tax appeals.

Sec. 2. RCW 80.01.050 and 1961 c 14 s 80.01.050 are each amended to read as follows:

A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission, and may hold hearings at any time or place within or without the state. Any investigation, inquiry, or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner or any ~~((examiner))~~ employee designated and authorized by the commission as provided in RCW 80.01.060. All investigations, inquiries, and hearings of the commission, and all findings, orders, or decisions, made by a commissioner, when approved and confirmed by the commission and filed in its office, shall be and be deemed to be the orders or decisions of the commission.

Sec. 3. RCW 80.01.060 and 1991 c 48 s 1 are each amended to read as follows:

(1) The commission ~~((shall have the power to request the appointment of))~~ may designate employees of the commission as hearing examiners, administrative law judges ~~((under chapter 34.12 RCW)), and review judges~~ when it deems such action necessary for its general administration. ~~((Such administrative law judges shall))~~ The designated employees have power to administer oaths, to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony, to examine witnesses, and to receive

testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules as the commission may adopt.

(2) In general rate increase filings by a natural gas, electric, or telecommunications company, the designated employee may preside, but may not enter an initial order unless expressly agreed to in writing by the company making the filing. In all other cases, the designated employee may enter an initial order including findings of fact and conclusions of law in accordance with RCW 34.05.461(1)(a) and (c) and (3) through (9) or 34.05.485. RCW 34.05.461 (1)(b) and (2) do not apply to entry of orders under this section. The designated employee may not enter final orders, except that the commission may designate persons by rule to preside and enter final orders in emergency adjudications under RCW 34.05.479.

(3) If the designated employee does not enter an initial order as provided in subsection (2) of this section, then a majority of the members of the commission who are to enter the final order must hear or review substantially all of the record submitted by any party.

NEW SECTION. Sec. 4. RCW 34.12.042 and 1982 c 189 s 13 are each repealed.

Passed the House April 20, 1995.

Passed the Senate April 10, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 332

[Substitute Senate Bill 5141]

DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

AN ACT Relating to offenses involving alcohol or drugs; amending RCW 46.20.308, 46.20.309, 46.20.355, 46.61.5058, 3.62.090, 35.21.165, 36.32.127, 46.04.480, 46.20.311, 46.20.391, 46.61.5054, 46.61.5056, 46.61.5151, 46.04.015, and 46.61.506; reenacting and amending RCW 46.63.020; adding a new section to chapter 46.20 RCW; adding new sections to chapter 46.61 RCW; adding a new section to chapter 46.04 RCW; recodifying RCW 46.20.309; repealing RCW 46.20.365, 46.61.5051, 46.61.5052, and 46.61.5053; repealing 1994 c 275 s 44 (uncodified); prescribing penalties; providing an effective date; and declaring an emergency.

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

PART I - IMPLIED CONSENT AND ADMINISTRATIVE REVOCATION

Sec. 1. RCW 46.20.308 and 1994 c 275 s 13 are each amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the ~~((alcoholic content of))~~ alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting

officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.20.309 (as recodified by this act).

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration of 0.02 or more in his or her system and being under the age of twenty-one. However, in those instances where ~~((+-(a)))~~ the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample ~~((+-(b) as a result of a traffic accident))~~ or where the person is being treated ((for a medical condition)) in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that:

(a) His or her license, permit, or privilege to drive will be revoked or denied if he or she refuses to submit to the test~~((+-(b) that))~~;

(b) His or her license, permit, or privilege to drive will be suspended, revoked, denied, or placed in probationary status if the test is administered and the test indicates the alcohol concentration of the person's breath or blood is 0.10 or more, in the case of a person age twenty-one or over, or 0.02 or more in the case of a person under age twenty-one; and

(c) His or her refusal to take the test may be used in a criminal trial.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person ~~((has been injured and there is a reasonable likelihood that such other person may die as a result of injuries sustained in the accident))~~, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person

shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.10 or more if the person is age twenty-one or over, or is 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, deny, or place in probationary status the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.02 or more;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of

the person's breath or blood was 0.10 or more if the person is age twenty-one or over, or was 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report ((of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor and that the person had refused to submit to the test or tests upon the request of the law enforcement officer after being informed that refusal would result in the revocation of the person's privilege to drive)) or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, deny, or place in probationary status the person's license ((or)), permit, or privilege to drive or any nonresident operating privilege, as provided in section 3 of this act, such suspension, revocation, denial, or placement in probationary status to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

((7) Upon revoking the license or permit to drive or the nonresident operating privilege of any person, the department shall immediately notify the person involved in writing by personal service or by certified mail of its decision and the grounds therefor, and of the person's right to a hearing, specifying the steps he or she must take to obtain a hearing. Within fifteen days after the notice has been given, the person may, in writing, request a formal hearing. The person shall pay a fee of one hundred dollars as part of the request.))

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request ((and such fee)) for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing ((as provided in)). Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of ((such)) the hearing shall cover the issues of whether a law enforcement officer

had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (h) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.10 or more if the person was age twenty-one or over at the time of the arrest, or was 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, denial, or placement in probationary status either be rescinded or sustained. ((Any decision by the department revoking a person's driving privilege shall be stayed and shall not take effect while a formal hearing is pending as provided in this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during pendency of the hearing and appeal.

~~(8))~~ (9) If the suspension, revocation, denial, or placement in probationary status is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, denied, or placed in probationary status has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner ((provided in RCW 46.20.334)) as an appeal from a decision of a court of limited jurisdiction. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, denial, or placement in probationary status. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, denial, or placement in probationary status as expeditiously as possible. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, denial, or placement in probationary status it may impose conditions on such stay.

(10) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, denied, or placed in probationary status under subsection (7) of this section, other than as a result of a breath test refusal, and who has not committed an offense within the last five years for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection 7 of this section the court may direct the department to stay any actual or proposed suspension, revocation, denial, or placement in probationary status for at least forty-five days but not more than ninety days. If the court stays the suspension, revocation, denial, or placement in probationary status, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

A suspension, revocation, or denial imposed under this section, other than as a result of a breath test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial

reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

~~((9))~~ (11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

Sec. 2. RCW 46.20.309 and 1994 c 275 s 10 are each amended to read as follows:

(1) ~~Notwithstanding any other provision of this title, a person ((under the age of twenty one may not drive, operate, or be in physical control of a motor vehicle while having alcohol in his or her system in a concentration of 0.02 or above.~~

(2) ~~A person under the age of twenty one who drives or is in physical control of a motor vehicle within this state is deemed to have given consent, subject to the relevant portions of RCW 46.61.506, to be detained long enough, and be transported if necessary, to take a test or tests of that person's blood or breath for the purpose of determining the alcohol concentration in his or her system.~~

(3) ~~A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the driver, has reasonable grounds to believe that the driver was driving or in actual physical control of a motor vehicle while having alcohol in his or her system.~~

(4) ~~The law enforcement officer requesting the test or tests under subsection (2) of this section shall warn the person requested to submit to the test that a refusal to submit will result in that person's driver's license or driving privilege being revoked.~~

(5) ~~If the person refuses testing, or submits to a test that discloses an alcohol concentration of 0.02 or more, the law enforcement officer shall:~~

~~(a) Serve the person notice in writing on behalf of the department of licensing of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive;~~

~~(b) Serve the person notice in writing on behalf of the department of licensing of the person's right to a hearing, specifying the steps required to obtain a hearing;~~

~~(c) Confiscate the person's Washington state license or permit to drive, if any, and issue a temporary license to replace any confiscated license or permit. The temporary license shall be valid for thirty days from the date of the traffic stop or until the suspension or revocation of the person's license or permit is sustained at a hearing as provided by subsection (7) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit it replaces;~~

~~(d) Notify the department of licensing of the traffic stop, and transmit to the department any confiscated license or permit and a sworn report stating:~~

~~(i) That the officer had reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle within this state with alcohol in his or her system;~~

~~(ii) That pursuant to this section a test of the person's alcohol concentration was administered or that the person refused to be tested;~~

~~(iii) If administered, that the test indicated the person's alcohol concentration was 0.02 or higher; and~~

~~(iv) Any other information that the department may require by rule.~~

~~(6) Upon receipt of the sworn report of a law enforcement officer under subsection (5) of this section, the department shall suspend or revoke the driver's license or driving privilege beginning thirty days from the date of the traffic stop or beginning when the suspension, revocation, or denial is sustained at a hearing as provided by subsection (7) of this section. Within fifteen days after notice of a suspension or revocation has been given, the person may, in writing, request a formal hearing. If such a request is not made within the prescribed time the right to a hearing is waived. Upon receipt of such request, the department shall afford the person an opportunity for a hearing as provided in RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the revocation of the person's driver's license or driving privilege, and, if the test or tests of the person's breath or blood was administered, whether the results indicated an alcohol concentration of 0.02 or more. The department shall order that the suspension or revocation of the person's driver's license or driving privilege either be rescinded or sustained. Any decision by the department suspending or revoking a person's driver's license or driving privilege is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the suspension or revocation of the person's driver's license or driving privilege is sustained after the hearing, the person may file a petition in the superior court of the county of arrest to review the final order of suspension or revocation by the department in the manner provided in RCW 46.20.334.~~

~~(7) The department shall suspend or revoke the driver's license or driving privilege of a person as required by this section as follows:~~

~~(a) In the case of a person who has refused a test or tests:~~

~~(i) For a first refusal within five years, revocation for one year;~~

~~(ii) For a second or subsequent refusal within five years, revocation or denial for two years.~~

~~(b) In the case of an incident where a person has submitted to a test or tests indicating an alcohol concentration of 0.02 or more:~~

~~(i) For a first incident within five years, suspension for ninety days;~~

~~(ii) For a second or subsequent incident within five years, revocation for one year or until the person reaches age twenty-one whichever occurs later.~~

~~(8) For purposes of this section, "alcohol concentration" means (a) grams of alcohol per two hundred ten liters of a person's breath, or (b) the percent by weight of alcohol in a person's blood)) is guilty of driving a motor vehicle after consuming alcohol if the person operates a motor vehicle within this state and the person:~~

~~(a) Is under the age of twenty-one;~~

~~(b) Has, within two hours after operating the motor vehicle, an alcohol concentration of 0.02 or more, as shown by analysis of the person's breath or blood made under RCW 46.61.506.~~

~~(2) It is an affirmative defense to a violation of subsection (1) 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 0.02 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 earlier of: (a) Seven days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.~~

~~(3) 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 an alcohol concentration of 0.02 or more in violation of subsection (1) of this section.~~

~~(4) A violation of this section is a misdemeanor.~~

NEW SECTION. Sec. 3. A new section is added to chapter 46.20 RCW to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

(1) In the case of a person who has refused a test or tests:

(a) For a first refusal within five years, where there has not been a previous incident within five years that resulted in administrative action under this section, revocation or denial for one year;

(b) For a second or subsequent refusal within five years, or for a first refusal where there has been one or more previous incidents within five years that have resulted in administrative action under this section, revocation or denial for two years or until the person reaches age twenty-one, whichever is longer. A revocation imposed under this subsection (1)(b) shall run consecutively to the period of any suspension, revocation, or denial imposed pursuant to a criminal conviction arising out of the same incident.

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.10 or more:

(a) For a first incident within five years, where there has not been a previous incident within five years that resulted in administrative action under this section, placement in probationary status as provided in RCW 46.20.355;

(b) For a second or subsequent incident within five years, revocation or denial for two years.

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.02 or more:

(a) For a first incident within five years, suspension or denial for ninety days;

(b) For a second or subsequent incident within five years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer.

Sec. 4. RCW 46.20.355 and 1994 c 275 s 8 are each amended to read as follows:

(1) ~~Upon ((notification of a conviction under RCW 46.61.502 or 46.61.504 for which the issuance of a probationary driver's license is required))~~ placing a license, permit, or privilege to drive in probationary status under section 3(2)(a) of this act, or upon receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, the department of licensing shall order the person to surrender ~~((his or her))~~ any Washington state driver's license that may be in his or her possession. The department shall revoke the license, permit, or privilege to drive of any person who fails to surrender it as required by this section for one year, unless the license has been previously surrendered to the department, a law enforcement officer, or a court, or the person has completed an affidavit of lost, stolen, destroyed, or previously surrendered license, such revocation to take effect thirty days after notice is given of the requirement for license surrender.

(2) ~~((Upon receipt of the surrendered license, and following the expiration of any period of license suspension or revocation, or following receipt of a sworn statement under RCW 46.20.365 that requires issuance of a probationary license, the department shall issue the person a probationary license if otherwise qualified. The probationary license shall be renewed on the same cycle as the person's regular license would have been renewed until five years after the date of its issuance.))~~ The department shall place a person's driving privilege in probationary status as required by RCW 10.05.060 or 46.20.308 for a period of five years from the date the probationary status is required to go into effect.

(3) Following receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or following receipt of a sworn report under RCW 46.20.308 that requires immediate placement in probationary status under section 3(2)(a) of this act, the department shall require the person to obtain a

probationary license in order to operate a motor vehicle in the state of Washington, except as otherwise exempt under RCW 46.20.025. The department shall not issue the probationary license unless the person is otherwise qualified for licensing, and the person must renew the probationary license on the same cycle as the person's regular license would have been renewed until the expiration of the five-year probationary status period imposed under subsection (2) of this section.

(4) For each original issue or ((reissue)) renewal of a probationary license under this section, the department ((may)) shall charge ((the)) a fee ((authorized under RCW 46.20.311 for the reissuance of a license following a revocation for a violation of RCW 46.61.502 or 46.61.504)) of fifty dollars in addition to any other licensing fees required. Except for when renewing a probationary license, the department shall waive the fifty-dollar fee if the person has a probationary license in his or her possession at the time a new probationary license is required.

((4)) (5) A probationary license shall enable the department and law enforcement personnel to determine that the person is on probationary status((including the period of that status, for a violation of RCW 46.61.502 or 46.61.504 or 46.20.365)). ((That)) The fact that a person's driving privilege is in probationary status or that the person has been issued a probationary license shall not be a part of the person's record that is available to insurance companies.

PART II - CRIMINAL SANCTIONS

NEW SECTION. Sec. 5. A new section is added to chapter 46.61 RCW, to be codified between RCW 46.61.500 and 46.61.520, to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of ninety days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one hundred twenty days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege.

(2) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year. Thirty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one year. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year. Forty-five days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of four hundred fifty days. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege.

(3) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or more prior offenses within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year. Ninety days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of two years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year. One hundred twenty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of three years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege.

(4) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property.

(5) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(6)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within

this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include 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 probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(7)(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), or (iv) of this subsection if committed in this state; or

(vi) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance.

(b) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense.

Sec. 6. RCW 46.61.5058 and 1994 c 139 s 1 are each amended to read as follows:

(1) Upon the arrest of a person or upon the filing of a complaint, citation, or information in a court of competent jurisdiction, based upon probable cause to believe that a person has violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance, if such person has a ~~((previous conviction for violation of either RCW 46.61.502 or 46.61.504 or other similar municipal ordinance, and where the offense occurs within a five-year period of the previous conviction))~~ prior offense within five years as defined in section 5 of this act, and where the person has been provided written notice that any transfer, sale, or encumbrance of such person's interest in the vehicle over which that person was actually

driving or had physical control when the violation occurred, is unlawful pending either acquittal, dismissal, sixty days after conviction, or other termination of the charge, such person shall be prohibited from encumbering, selling, or transferring his or her interest in such vehicle, except as otherwise provided in (a), (b), and (c) of this subsection, until either acquittal, dismissal, sixty days after conviction, or other termination of the charge. The prohibition against transfer of title shall not be stayed pending the determination of an appeal from the conviction.

(a) A vehicle encumbered by a bona fide security interest may be transferred to the secured party or to a person designated by the secured party;

(b) A leased or rented vehicle may be transferred to the lessor, rental agency, or to a person designated by the lessor or rental agency; and

(c) A vehicle may be transferred to a third party or a vehicle dealer who is a bona fide purchaser or may be subject to a bona fide security interest in the vehicle unless it is established that (i) in the case of a purchase by a third party or vehicle dealer, such party or dealer had actual notice that the vehicle was subject to the prohibition prior to the purchase, or (ii) in the case of a security interest, the holder of the security interest had actual notice that the vehicle was subject to the prohibition prior to the encumbrance of title.

(2) On ~~((a second or subsequent))~~ conviction for a violation of either RCW 46.61.502 or 46.61.504 or any similar municipal ordinance where ~~((such offense was committed within a five-year period of the previous conviction))~~ the person convicted has a prior offense within five years as defined in section 5 of this act, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture pursuant to this section.

(3) A vehicle subject to forfeiture under this chapter may be seized by a law enforcement officer of this state upon process issued by a court of competent jurisdiction. Seizure of a vehicle may be made without process if the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) Seizure under subsection (3) of this section automatically commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized vehicle to be served within fifteen days after the seizure on the owner of the vehicle seized, on the person in charge of the vehicle, and on any person having a known right or interest in the vehicle, including a community property interest. 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 is complete upon mailing within the fifteen-day period after the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected on 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.

(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 seized vehicle within forty-five days of the seizure, the vehicle is deemed forfeited.

(6) 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 vehicle 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, 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 vehicle 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 vehicle involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the legal owner or the person claiming to have the lawful right to possession of the vehicle. The seizing law enforcement agency shall promptly return the vehicle to the claimant upon a determination by the administrative law judge or court that the claimant is the present legal owner under Title 46 RCW or is lawfully entitled to possession of the vehicle.

(7) When a vehicle is forfeited under this chapter the seizing law enforcement agency may sell the vehicle, retain it for official use, or upon application by a law enforcement agency of this state release the vehicle to that agency for the exclusive use of enforcing this title; provided, however, that the agency shall first satisfy any bona fide security interest to which the vehicle is subject under subsection (1) (a) or (c) of this section.

(8) When a vehicle is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the vehicle, the disposition of the vehicle, the value of the vehicle at the time of seizure, and the amount of proceeds realized from disposition of the vehicle.

(9) Each seizing agency shall retain records of forfeited vehicles for at least seven years.

(10) Each seizing agency shall file a report including a copy of the records of forfeited vehicles with the state treasurer each calendar quarter.

(11) The quarterly report need not include a record of a forfeited vehicle that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(12) 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 vehicles forfeited during the preceding calendar year. Money remitted shall be deposited in the public safety and education account.

(13) The net proceeds of a forfeited vehicle is the value of the forfeitable interest in the vehicle after deducting the cost of satisfying a bona fide security interest to which the vehicle is subject at the time of seizure; and in the case of a sold vehicle, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(14) The value of a sold forfeited vehicle is the sale price. The value of a retained forfeited vehicle is the fair market value of the vehicle 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. A seizing agency may, but need not, use an independent qualified appraiser to determine the value of retained vehicles. If an appraiser is used, the value of the vehicle appraised is net of the cost of the appraisal.

PART III - TECHNICAL AMENDMENTS

Sec. 7. RCW 3.62.090 and 1994 c 275 s 34 are each amended to read as follows:

(1) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions, by all courts organized under Title 3 or 35 RCW a public safety and education assessment equal to sixty percent of such fines, forfeitures, or penalties, which shall be remitted as provided in chapters 3.46, 3.50, 3.62, and 35.20 RCW. The assessment required by this section shall not be suspended or waived by the court.

(2) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions and for fines levied under ~~((RCW 46.61.5051, 46.61.5052, and 46.61.5053))~~ section 5 of this act, and in addition to the public safety and education assessment required under subsection (1) of this section, by all courts organized under Title 3 or 35 RCW, an additional public safety and education assessment equal to fifty percent of the public safety and education assessment required under subsection (1) of this section, which shall be remitted to the state treasurer and deposited as provided in RCW 43.08.250. The additional assessment required by this subsection shall not be suspended or waived by the court.

Sec. 8. RCW 35.21.165 and 1994 c 275 s 36 are each amended to read as follows:

Except as limited by the maximum penalties authorized by law, no city or town may establish a penalty for an act that constitutes the crime of driving while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.502, or the crime of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.504, that is less than the penalties prescribed for those crimes in (~~RCW 46.61.5051, 46.61.5052, and 46.61.5053~~) section 5 of this act.

Sec. 9. RCW 36.32.127 and 1994 c 275 s 37 are each amended to read as follows:

No county may establish a penalty for an act that constitutes the crime of driving while under the influence of intoxicating liquor or any drug, as provided for in RCW 46.61.502, or the crime of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.504, that is less than the penalties prescribed for those crimes in (~~RCW 46.61.5051, 46.61.5052, and 46.61.5053~~) section 5 of this act.

Sec. 10. RCW 46.04.480 and 1994 c 275 s 38 are each amended to read as follows:

"Revoke," in all its forms, means the invalidation for a period of one calendar year and thereafter until reissue: PROVIDED, That under the provisions of RCW 46.20.285, 46.20.311, 46.20.265, (~~46.61.5051, 46.61.5052, or 46.61.5053~~) or section 5 of this act, and chapter 46.65 RCW the invalidation may last for a period other than one calendar year.

Sec. 11. RCW 46.20.311 and 1994 c 275 s 27 are each amended to read as follows:

(1) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.342 or other provision of law. Except for a suspension under RCW 46.20.289 and 46.20.291(5), whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified. The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be fifty dollars.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (a) After the expiration of one year from the date the license or privilege to drive was revoked; (b) after the expiration of the applicable revocation period provided by (~~RCW 46.20.308 or 46.61.5052, 46.61.5053, or 46.20.365~~) section 3 or 5 of this act; (c) after the expiration of two years for persons convicted of vehicular homicide; or (d) after the expiration of the applicable revocation period provided by RCW 46.20.265. After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of twenty dollars, but if the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504 (~~or is the result of administrative action under RCW 46.20.365~~), the reissue fee shall be fifty dollars. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be fifty dollars.

Sec. 12. RCW 46.20.391 and 1994 c 275 s 29 are each amended to read as follows:

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, may submit to the department an application for an occupational driver's license. The department, upon receipt of the prescribed fee and upon determining that the

petitioner is engaged in an occupation or trade that makes it essential that the petitioner operate a motor vehicle, may issue an occupational driver's license and may set definite restrictions as provided in RCW 46.20.394. No person may petition for, and the department shall not issue, an occupational driver's license that is effective during the first thirty days of any suspension or revocation imposed for a violation of RCW 46.61.502 or 46.61.504. ~~((No person may petition for, and the department shall not issue, an occupational driver's license if the person is ineligible for such a license under RCW 46.61.5052 or 46.61.5053.))~~ A person aggrieved by the decision of the department on the application for an occupational driver's license may request a hearing as provided by rule of the department.

(2) An applicant for an occupational driver's license is eligible to receive such license only if:

(a) Within one year immediately preceding the date of the offense that gave rise to the present conviction, the applicant has not committed ~~((of))~~ any ~~((committed any))~~ offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and

(b) Within five years immediately preceding the date of the offense that gave rise to the present conviction, the applicant has not committed any of the following offenses: (i) Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or (iii) vehicular assault under RCW 46.61.522; and

(c) The applicant is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle; and

(d) The applicant files satisfactory proof of financial responsibility pursuant to chapter 46.29 RCW.

(3) The director shall cancel an occupational driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of an offense that pursuant to chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title.

Sec. 13. RCW 46.61.5054 and 1994 c 275 s 7 are each amended to read as follows:

(1)(a) In addition to penalties set forth in RCW 46.61.5051 through 46.61.5053 until September 1, 1995, and section 5 of this act thereafter, 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.

(2) The fee assessed under subsection (1) 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 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

(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.

(3) This section applies to any offense committed on or after July 1, 1993.

Sec. 14. RCW 46.61.5056 and 1994 c 275 s 9 are each amended to read as follows:

(1) A person subject to alcohol assessment and treatment under ~~((RCW 46.61.5051, 46.61.5052, or 46.61.5053))~~ section 5 of this act shall be required by the court to complete a course in an alcohol information school approved by the department of social and health services or to complete more intensive treatment in a program approved by the department of social and health services, as determined by the court. The court shall notify the department of licensing whenever it orders a person to complete a course or treatment program under this section.

(2) 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 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.

(3) Standards for approval for alcohol treatment programs shall be prescribed by the department of social and health services. The department of social and health services shall periodically review the costs of alcohol information schools and treatment programs.

(4) Any agency that provides treatment ordered under ~~((RCW 46.61.5051, 46.61.5052, or 46.61.5053))~~ section 5 of this act, shall immediately report to the appropriate probation department where applicable, otherwise to the court, and

to the department of licensing any noncompliance by a person with the conditions of his or her ordered treatment. The court shall notify the department of licensing and the department of social and health services of any failure by an agency to so report noncompliance. Any agency with knowledge of noncompliance that fails to so report shall be fined two hundred fifty dollars by the department of social and health services. Upon three such failures by an agency within one year, the department of social and health services shall revoke the agency's approval under this section.

(5) The department of licensing and the department of social and health services may adopt such rules as are necessary to carry out this section.

Sec. 15. RCW 46.61.5151 and 1994 c 275 s 39 are each amended to read as follows:

A sentencing court may allow persons convicted of violating RCW 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in (~~RCW 46.61.5051, 46.61.5052, or 46.61.5053~~) section 5 of this act in nonconsecutive or intermittent time periods. However, any mandatory minimum sentence under (~~RCW 46.61.5051, 46.61.5052, or 46.61.5053~~) section 5 of this act shall be served consecutively unless suspended or deferred as otherwise provided by law.

Sec. 16. RCW 46.63.020 and 1994 c 275 s 33 and 1994 c 141 s 2 are each reenacted and amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

- (1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;
- (2) RCW 46.09.130 relating to operation of nonhighway vehicles;
- (3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;
- (4) RCW 46.10.130 relating to the operation of snowmobiles;
- (5) Chapter 46.12 RCW relating to certificates of ownership and registration;
- (6) RCW 46.16.010 relating to initial registration of motor vehicles;
- (7) RCW 46.16.011 relating to permitting unauthorized persons to drive;
- (8) RCW 46.16.160 relating to vehicle trip permits;
- (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;
- (10) RCW 46.20.021 relating to driving without a valid driver's license;
- (11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

- (12) RCW 46.20.342 relating to driving with a suspended or revoked license or status;
- (13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (14) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (15) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (16) RCW 46.25.170 relating to commercial driver's licenses;
- (17) Chapter 46.29 RCW relating to financial responsibility;
- (18) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (19) RCW 46.37.435 relating to wrongful installation of sunscreening material;
- (20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (21) RCW 46.48.175 relating to the transportation of dangerous articles;
- (22) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (24) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;
- (26) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;
- (27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- (28) RCW 46.55.035 relating to prohibited practices by tow truck operators;
- (29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- (30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- (31) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- (32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- (33) RCW 46.61.500 relating to reckless driving;
- (34) RCW 46.61.502(7) and 46.61.504(1, ~~46.61.5051, 46.61.5052, and 46.61.5053~~) relating to persons under the influence of intoxicating liquor or drugs;
- (35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- (36) RCW 46.61.522 relating to vehicular assault;

- (37) RCW 46.61.525 relating to negligent driving;
- (38) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
- (39) RCW 46.61.530 relating to racing of vehicles on highways;
- (40) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- (41) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- (42) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
- (43) Chapter 46.65 RCW relating to habitual traffic offenders;
- (44) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;
- (45) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
- (46) Chapter 46.80 RCW relating to motor vehicle wreckers;
- (47) Chapter 46.82 RCW relating to driver's training schools;
- (48) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;
- (49) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Sec. 17. RCW 46.04.015 and 1994 c 275 s 1 are each amended to read as follows:

"Alcohol concentration" means (1) grams of alcohol per two hundred ten liters of a person's breath, or (2) ~~((the percent by weight of alcohol in))~~ grams of alcohol per one hundred milliliters of a person's blood.

Sec. 18. RCW 46.61.506 and 1994 c 275 s 26 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.10, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an

individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

(5) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(6) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

NEW SECTION. Sec. 19. A new section is added to chapter 46.04 RCW to read as follows:

"Reasonable grounds," when used in the context of a law enforcement officer's decision to make an arrest, means probable cause.

NEW SECTION. Sec. 20. RCW 46.20.309 is recodified as a section in chapter 46.61 RCW.

NEW SECTION. Sec. 21. The following acts or parts of acts are each repealed:

- (1) RCW 46.20.365 and 1994 c 275 s 12;
- (2) RCW 46.61.5051 and 1994 c 275 s 4;
- (3) RCW 46.61.5052 and 1994 c 275 s 5; and
- (4) RCW 46.61.5053 and 1994 c 275 s 6.

NEW SECTION. Sec. 22. 1994 c 275 s 44 (uncodified) is hereby repealed.

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. This act shall take effect September 1, 1995, except for sections 13 and 22 of this act which 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 Senate April 23, 1995.
Passed the House April 23, 1995.
Approved by the Governor May 11, 1995.
Filed in Office of Secretary of State May 11, 1995.

CHAPTER 333

[Substitute Senate Bill 5155]

HYDRAULIC PERMIT EXEMPTIONS FROM SHORELINE MANAGEMENT ACT

AN ACT Relating to hydraulic permit exemptions from the shoreline management act; and adding a new section to chapter 90.58 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 90.58 RCW to read as follows:

A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

- (1) The project has been approved by the department of fish and wildlife;
- (2) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 75.20 RCW; and
- (3) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Passed the Senate March 14, 1995.
Passed the House April 21, 1995.
Approved by the Governor May 11, 1995.
Filed in Office of Secretary of State May 11, 1995.

CHAPTER 334

[Second Substitute Senate Bill 5574]

FOREST BOARD LANDS MANAGEMENT STUDY

AN ACT Relating to the return of state forest board transfer lands back to counties; and creating new sections.

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

NEW SECTION. **Sec. 1.** The legislature finds that in the early 1900's and up through the 1930's, counties took possession of a number of forest land parcels as a result of tax delinquencies. In many cases, the timber had already been harvested from these lands prior to the forfeiture of the property to the counties. Since that time, the department of natural resources has reforested and managed these lands in conjunction with the state trust lands. Given changes in forest practices, recent fluctuation in income from the forest board lands, and questions about the management of the department of natural resources, the

legislature directs that a study of the policies and an analysis of economic elements of the management of state forest board lands be conducted by the legislative budget committee, in consultation with the Washington state members of western states legislatures forestry task force and the chairs of the senate and house of representatives committees on natural resources.

NEW SECTION. Sec. 2. The study under section 1 of this act shall include elements such as the following:

- (1) The role of forest board lands in the state's sustained yield calculations and the effect of removing all or part of those lands on income, yield, and management policies;
- (2) The economic and forest practice implications of separating the forest board lands from the total lands managed by the department of natural resources;
- (3) The effects of a transfer on public access, recreation, and the management of other public and private lands;
- (4) A comparison of forest management procedures and costs between Grays Harbor county and similar forest board and state trust lands; and
- (5) An examination of the best possible methods and procedures to transfer board lands to the counties.

NEW SECTION. Sec. 3. The findings of the study, along with recommendations to the legislature, shall be submitted to the appropriate standing committees of the legislature by December 31, 1996.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1995, in the omnibus appropriations act, this act is null and void.

Passed the Senate April 23, 1995.

Passed the House April 23, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 335

[Engrossed Substitute Senate Bill 5169]

EDUCATION RESTRUCTURING—ENACTMENT OF RECOMMENDATIONS OF JOINT SELECT COMMITTEE ON

AN ACT Relating to the recommendations of the joint select committee on education restructuring; amending RCW 28A.150.360, 28A.150.370, 28A.150.380, 28A.215.010, 28A.215.040, 28A.625.050, 28A.630.868, 28A.630.870, 28A.630.874, 28A.630.880, 28A.205.050, 28A.630.400, 28A.170.075, 28A.170.090, 28A.610.010, 28A.610.020, 28A.610.030, 28A.600.—, 28A.215.020, 28A.215.030, 28A.215.050, 28A.405.120, 28A.415.105, 28B.90.005, 28A.215.170, 28A.320.200, 28A.330.100, 28A.400.306, 28A.630.885, 28A.630.952, 28A.650.015, 28A.180.080, 28A.225.220, 28A.225.250, 28A.335.160, 28A.405.070, and 28A.405.460; reenacting and amending RCW 28A.315.680; adding new sections to chapter 28A.410 RCW; adding a new chapter to Title 28B RCW; creating new sections; recodifying RCW 28A.405.010, 28A.405.025, 28A.610.010, 28A.610.020, 28A.610.030, 28A.610.040, and 28A.610.050; repealing RCW 28A.310.380, 28A.170.010, 28A.170.020, 28A.170.030, 28A.170.040, 28A.170.060, 28A.170.070, 28A.175.060, 28A.210.050, 28A.225.190, 28A.405.150, 28A.405.160, 28A.415.290, 28A.630.090, 28A.630.091,

28A.630.750, 28A.630.753, 28A.630.756, 28A.630.759, 28A.630.762, 28A.630.765, 28A.630.768, 28A.630.771, 28A.630.774, 28A.630.777, 28A.630.780, 28A.630.783, 28A.630.786, 28A.630.789, 28A.630.800, 28A.175.070, 28A.210.005, 28A.215.300, 28A.215.310, 28A.215.320, 28A.215.330, 28A.234.010, 28A.175.020, 28A.175.030, 28A.175.040, 28A.175.050, 28A.240.010, 28A.240.020, 28A.240.030, 28A.300.110, 28A.300.180, 28A.300.200, 28A.415.110, 28A.415.115, 28A.415.220, 28A.600.425, 28A.600.430, 28A.600.435, 28A.600.440, 28A.600.445, 28A.600.450, 28A.615.060, 28A.625.300, 28A.630.070, 28A.630.075, 28A.630.300, 28A.630.320, 28A.630.330, 28A.630.390, 28A.415.120, 28A.205.060, 28A.225.180, 28A.225.320, 28A.300.210, 28A.335.310, 28A.340.050, 28A.170.100, 28A.175.080, 28A.180.050, 28A.180.070, 28A.415.050, and 28A.400.150; and providing expiration dates.

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

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PART 1 - OBSOLETE REFERENCES

Sec. 101. RCW 28A.150.360 and 1990 c 33 s 113 are each amended to read as follows:

In the event of an unforeseen emergency, in the nature of either an unavoidable cost to a district or unexpected variation in anticipated revenues to a district, the state superintendent is authorized, for not to exceed two years, to make such an adjustment in the allocation of funds as is consistent with the intent of ((RCW 28A.150.100 through 28A.150.430)) this chapter, RCW 28A.160.150 through ((28A.160.220)) 28A.160.210, 28A.300.170, and 28A.500.010 in providing an equal educational opportunity for the children of such district or districts.

Sec. 102. RCW 28A.150.370 and 1990 c 33 s 114 are each amended to read as follows:

In addition to those state funds provided to school districts for basic education, the legislature shall appropriate funds for pupil transportation, in accordance with ~~((RCW 28A.150.100 through 28A.150.430))~~ this chapter, RCW 28A.160.150 through ~~((28A.160.220))~~ 28A.160.210, 28A.300.170, and 28A.500.010, and for programs for handicapped students, in accordance with RCW 28A.155.010 through 28A.155.100. The legislature may appropriate funds to be distributed to school districts for population factors such as urban costs, enrollment fluctuations and for special programs, including but not limited to, vocational-technical institutes, compensatory programs, bilingual education, urban, rural, racial and disadvantaged programs, programs for gifted students, and other special programs.

Sec. 103. RCW 28A.150.380 and 1990 c 33 s 115 are each amended to read as follows:

The state legislature shall, at each regular session in an odd-numbered year, appropriate from the state general fund for the current use of the common schools such amounts as needed for state support to the common schools during the ensuing biennium as provided in ~~((RCW 28A.150.100 through 28A.150.430))~~ this chapter, RCW 28A.160.150 through ~~((28A.160.220))~~ 28A.160.210, 28A.300.170, and 28A.500.010.

Sec. 104. RCW 28A.215.010 and 1969 ex.s. c 223 s 28A.34.010 are each amended to read as follows:

The board of directors of any school district shall have the power to establish and maintain ~~((nursery schools))~~ preschools and to provide before-and-after-school and vacation care in connection with the common schools of said district located at such points as the board shall deem most suitable for the convenience of the public, for the care and instruction of infants and children residing in said district. The board shall establish such courses, activities, rules, and regulations governing ~~((nursery schools))~~ preschools and before-and-after-school care as it may deem best: PROVIDED, That these courses and activities shall meet the minimum standard for such ~~((nursery schools))~~ preschools as established by the United States Department of Health, Education and Welfare, or its successor agency, and the state board of education. Except as otherwise provided by state or federal law, the board of directors may fix a reasonable charge for the care and instruction of children attending such schools. The board may, if necessary, supplement such funds as are received for the superintendent of public instruction or any agency of the federal government, by an appropriation from the general school fund of the district.

Sec. 105. RCW 28A.215.040 and 1973 1st ex.s. c 154 s 45 are each amended to read as follows:

Every board of directors shall have power to establish, equip and maintain ~~((nursery schools))~~ preschools and/or provide before-and-after-school care for children of working parents, in cooperation with the federal government or any

of its agencies, when in their judgment the best interests of their district will be subserved thereby.

Sec. 106. RCW 28A.315.680 and 1991 c 363 s 29 and 1991 c 288 ss 7 and 8 are each reenacted and amended to read as follows:

The school boards of any school district of the first class having within its boundaries a city with a population of four hundred thousand people or more shall establish the director district boundaries. Appointment of a board member to fill any vacancy existing for a new director district prior to the next regular school election shall be by the school board. Prior to the next regular election in the school district and the filing of declarations of candidacy therefor, the incumbent school board shall designate said director districts by number. Directors appointed to fill vacancies as above provided shall be subject to election, one for a six-year term, and one for a two-year term and thereafter the term of their respective successors shall be for four years. The term of office of incumbent members of the board of such district shall not be affected by RCW 28A.315.450, 28A.315.460, 28A.315.570, 28A.315.670, and 28A.315.680 (~~and 29.21.180~~).

Sec. 107. RCW 28A.625.010 and 1990 c 33 s 513 are each amended to read as follows:

RCW 28A.625.020 through (~~28A.625.070 and 28B.15.547~~) 28A.625.065 may be known and cited as the Washington award for excellence in education program act.

Sec. 108. RCW 28A.625.050 and 1991 c 255 s 8 are each amended to read as follows:

The superintendent of public instruction shall adopt rules under chapter 34.05 RCW to carry out the purposes of RCW 28A.625.010 through (~~28A.625.070~~) 28A.625.065. These rules shall include establishing the selection criteria for the Washington award for excellence in education program. The superintendent is encouraged to consult with teachers, educational staff associates, principals, administrators, classified employees, superintendents, and school board members in developing the selection criteria. Notwithstanding the provisions of RCW 28A.625.020 (1) and (2), such rules may allow for the selection of individuals whose teaching or administrative duties, or both, may encompass multiple grade level or building assignments, or both.

Sec. 109. RCW 28A.630.868 and 1993 c 335 s 5 are each amended to read as follows:

(1) The superintendent of public instruction shall administer RCW (~~28A.630.860~~) 28A.630.861 through 28A.630.880.

(2) The school-to-work transitions projects may be conducted for up to six years, if funds are provided.

Sec. 110. RCW 28A.630.870 and 1993 c 335 s 6 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)~~) 28A.630.861 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)~~) 28A.630.861 through 28A.630.880.

(2) The 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~~) RCW 28A.630.861 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. 111. RCW 28A.630.874 and 1993 c 335 s 7 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)~~) 28A.630.861 through 28A.630.880.

Sec. 112. RCW 28A.630.880 and 1993 c 335 s 10 are each amended to read as follows:

RCW (~~(28A.630.860)~~) 28A.630.861 through 28A.630.880 may be known and cited as the school-to-work transitions program.

NEW SECTION. **Sec. 113.** RCW 28A.310.380 and 1975 1st ex.s. c 275 s 32, 1971 ex.s. c 282 s 23, & 1969 ex.s. c 176 s 16 are each repealed.

PART II - OBSOLETE SECTIONS

Sec. 201. RCW 28A.205.050 and 1993 c 211 s 4 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 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. 202. RCW 28A.630.400 and 1991 c 285 s 2 are each amended to read as follows:

(1) The state board of education and the state board for community and technical colleges ~~((education))~~, in consultation with the superintendent of public instruction, the higher education coordinating board, the state apprenticeship training council, and community colleges, shall ~~((work cooperatively to develop by September 1, 1992, an educational paraprofessional))~~ adopt rules as necessary under chapter 34.05 RCW to implement the paraeducator associate of arts degree.

(2) As used in this section, ~~((an "educational paraprofessional"))~~ a "paraeducator" is an individual who has completed an associate of arts degree for ~~((an educational paraprofessional))~~ a paraeducator. The ~~((educational paraprofessional))~~ paraeducator may be hired by a school district to assist certificated instructional staff in the direct instruction of children in small and large groups, individualized instruction, testing of children, recordkeeping, and preparation of materials. The ~~((educational paraprofessional))~~ paraeducator shall work under the direction of instructional certificated staff.

(3) The training program for ~~((an educational paraprofessional))~~ a paraeducator associate of arts degree shall include, but is not limited to, the general requirements for receipt of an associate of arts degree and training in the areas of introduction to childhood education, orientation to handicapped children, fundamentals of childhood education, creative activities for children, instructional materials for children, fine art experiences for children, the psychology of learning, introduction to education, child health and safety, child development and guidance, first aid, and a practicum in a school setting.

(4) ~~((In developing the program))~~ Consideration shall be given to transferability of credit earned in this program to teacher preparation programs at colleges and universities.

~~((5) The agencies identified under subsection (1) of this section shall adopt rules as necessary under chapter 34.05 RCW to implement this section.)~~

NEW SECTION. Sec. 203. The following acts or parts of acts are each repealed:

- (1) RCW 28A.170.010 and 1987 c 518 s 205;
- (2) RCW 28A.170.020 and 1990 c 33 s 153, 1989 c 233 s 5, & 1987 c 518 s 206;
- (3) RCW 28A.170.030 and 1987 c 518 s 207;
- (4) RCW 28A.170.040 and 1990 c 33 s 154 & 1987 c 518 s 208;
- (5) RCW 28A.170.060 and 1994 c 245 s 5, 1989 c 271 s 113, & 1987 c 518 s 210;

- (6) RCW 28A.170.070 and 1990 c 33 s 155 & 1987 c 518 s 211;
- (7) RCW 28A.175.060 and 1987 c 518 s 218;
- (8) RCW 28A.210.050 and 1969 ex.s. c 223 s 28A.31.060;
- (9) RCW 28A.225.190 and 1969 ex.s. c 223 s 28A.58.220;
- (10) RCW 28A.405.150 and 1990 c 33 s 388, 1988 c 241 s 1, 1986 c 73 s 1, & 1985 c 420 s 7;
- (11) RCW 28A.405.160 and 1990 c 33 s 389 & 1985 c 420 s 8;
- (12) RCW 28A.415.290 and 1993 c 336 s 406;
- (13) RCW 28A.630.090 and 1990 c 33 s 524 & 1987 c 401 s 11;
- (14) RCW 28A.630.091 and 1987 c 401 s 13;
- (15) RCW 28A.630.750 and 1991 c 346 s 1;
- (16) RCW 28A.630.753 and 1991 c 346 s 2;
- (17) RCW 28A.630.756 and 1991 c 346 s 3;
- (18) RCW 28A.630.759 and 1991 c 346 s 4;
- (19) RCW 28A.630.762 and 1991 c 346 s 5;
- (20) RCW 28A.630.765 and 1991 c 346 s 6;
- (21) RCW 28A.630.768 and 1991 c 346 s 7;
- (22) RCW 28A.630.771 and 1991 c 346 s 8;
- (23) RCW 28A.630.774 and 1991 c 346 s 9;
- (24) RCW 28A.630.777 and 1991 c 346 s 10;
- (25) RCW 28A.630.780 and 1991 c 346 s 11;
- (26) RCW 28A.630.783 and 1991 c 346 s 12;
- (27) RCW 28A.630.786 and 1991 c 346 s 13;
- (28) RCW 28A.630.789 and 1991 c 346 s 14; and
- (29) RCW 28A.630.800 and 1985 c 349 s 3.

Sec. 204. RCW 28A.170.075 and 1990 c 33 s 156 are each amended to read as follows:

(1) The legislature finds that the provision of drug and alcohol counseling and related prevention and intervention services in schools will enhance the classroom environment for students and teachers, and better enable students to realize their academic and personal potentials.

(2) The legislature finds that it is essential that resources be made available to school districts to provide early drug and alcohol prevention and intervention services to students and their families; to assist in referrals to treatment providers; and to strengthen the transition back to school for students who have had problems of drug and alcohol abuse.

(3) ~~((New and existing))~~ Substance abuse awareness programs funded ~~((pursuant to RCW 28A.170.010 through 28A.170.070))~~ under this chapter do not fall within the definition of basic education for purposes of Article IX of the state Constitution and the state's funding duty thereunder.

(4) The legislature intends to provide grants for drug and alcohol abuse prevention and intervention in schools, targeted to those schools with the highest concentrations of students at risk.

Sec. 205. RCW 28A.170.090 and 1990 c 33 s 158 are each amended to read as follows:

(1) The superintendent of public instruction shall select school districts and cooperatives of school districts to receive grants for drug and alcohol abuse prevention and intervention programs for students in kindergarten through twelfth grade, from funds appropriated by the legislature for this purpose. The minimum annual grant amount per district or cooperative of districts shall be twenty thousand dollars. Factors to be used in selecting proposals for funding and in determining grant awards shall be developed in consultation with the substance abuse advisory committee appointed under RCW 28A.170.050, with the intent of targeting funding to districts with high-risk populations. These factors may include:

(a) Characteristics of the school attendance areas to be served, such as the number of students from low-income families, truancy rates, juvenile justice referrals, and social services caseloads;

(b) The total number of students who would have access to services; and

(c) Participation of community groups and law enforcement agencies in drug and alcohol abuse prevention and intervention activities.

(2) The application procedures for grants under this section shall ~~((be consistent with the application procedures for other grants for substance abuse awareness programs under RCW 28A.170.020, including))~~ include provisions for comprehensive planning, establishment of a school and community substance abuse advisory committee, and documentation of the district's needs assessment. Planning and application for grants under this section may be integrated with the development of other substance abuse awareness programs by school districts ~~((and other grants under RCW 28A.170.010 through 28A.170.040 shall not require a separate application))~~. School districts shall, to the maximum extent feasible, coordinate the use of grants provided under this section with other funding available for substance abuse awareness programs. School districts should allocate resources giving emphasis to drug and alcohol abuse intervention services for students in grades five through nine. Grants may be used to provide services for students who are enrolled in approved private schools.

(3) School districts receiving grants under this section shall be required to establish a means of accessing formal assessment services for determining treatment needs of students with drug and alcohol problems. The grant applications submitted by districts shall identify the districts' plan for meeting this requirement.

(4) School districts receiving grants under this section shall be required to perform biennial evaluations of their drug and alcohol abuse prevention and intervention programs, and to report on the results of these evaluations to the superintendent of public instruction.

(5) The superintendent of public instruction may adopt rules to implement RCW 28A.170.080 ~~((through 28A.170.100))~~ and 28A.170.090.

PART III - RECODIFICATIONS OR TECHNICAL CHANGES

Sec. 301. RCW 28A.610.010 and 1990 c 33 s 505 are each amended to read as follows:

(1) Parents can be the most effective teachers for their children. Providing illiterate or semiliterate parents with opportunities to acquire basic skills and child development knowledge will enhance their ability to assist and support their children in the learning process, and will enhance children's learning experiences in the formal education environment by providing children with the motivation and positive home environment which contribute to enhanced academic performance.

(2) ~~((RCW 28A.610.020 through 28A.610.060))~~ This chapter may be known and cited as project even start.

Sec. 302. RCW 28A.610.020 and 1990 c 33 s 506 are each amended to read as follows:

Unless the context clearly requires otherwise, the definition in this section shall apply throughout ~~((RCW 28A.610.030 through 28A.610.060))~~ this chapter.

"Parent" or "parents" means a parent who has less than an eighth grade ability in one or more of the basic skill areas of reading, language arts, or mathematics, as measured by a standardized test, and who has a child or children enrolled in: (1) The state early childhood education and assistance program; (2) a federal head start program; (3) a state or federally funded elementary school basic skills program serving students who have scored below the national average on a standardized test in one or more of the basic skill areas of reading, language arts, or mathematics; or (4) a cooperative ~~((nursery school))~~ preschool at a community or technical college ~~((or vocational technical institute))~~.

Sec. 303. RCW 28A.610.030 and 1990 c 33 s 507 are each amended to read as follows:

(1) The ~~((superintendent of public instruction))~~ state board for community and technical colleges, in consultation with the department of community, trade, and economic development, the department of social and health services, the ~~((state board for community education))~~ superintendent of public instruction, and community-based, nonprofit providers of adult literacy services, shall develop an adult literacy program to serve eligible parents as defined under RCW 28A.610.020. The program shall give priority to serving parents with children who have not yet enrolled in school or are in grades kindergarten through three.

(2) In addition to providing basic skills instruction to eligible parents, the program may include other program components which may include transportation, child care, and such other directly necessary activities as may be necessary to accomplish the purposes of ~~((RCW 28A.610.020 through 28A.610.060))~~ this chapter.

(3) Parents who elect to participate in training or work programs, as a condition of receiving public assistance, shall have the hours spent in parent participation programs, conducted as part of a federal head start program, or the

state early childhood education and assistance program under RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908, or parent literacy programs under ~~((RCW 28A.610.020 through 28A.610.060))~~ this chapter, counted toward the fulfillment of their work and training obligation for the receipt of public assistance.

(4) State funds as may be appropriated for project even start shall be used solely to expand and complement, but not supplant, federal funds for adult literary programs.

(5) The ~~((superintendent of public instruction))~~ state board for community and technical colleges shall adopt rules as necessary to carry out the purposes of ~~((RCW 28A.610.020 through 28A.610.060))~~ this chapter.

Sec. 304. RCW 28A.600.— and 1995 c . . . (SSB 5440) s 2 are each amended to read as follows:

(1) Any elementary or secondary school student who is determined to have carried a firearm onto, or to have possessed a firearm on, public elementary or secondary school premises, public school-provided transportation, or areas of facilities while being used exclusively by public schools, shall be expelled from school for not less than one year under RCW 28A.600.010. The superintendent of the school district, educational service district, state school for the deaf, or state school for the blind may modify the expulsion of a student on a case-by-case basis.

(2) For purposes of this section, "firearm" means a firearm as defined in 18 U.S.C. Sec. 921, and a "firearm" as defined in RCW 9.41.010.

(3) This section shall be construed in a manner consistent with the individuals with disabilities education act, 20 U.S.C. Sec. 1401 et seq.

(4) Nothing in this section prevents a public school district, educational service district, the state school for the deaf, or the state school for the blind if it has expelled a student from such student's regular school setting from providing educational services to the student in an alternative setting.

(5) This section does not apply to:

(a) Any student while engaged in military education authorized by school authorities in which rifles are used but not other firearms; or

(b) Any student while involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the rifles of collectors or instructors are handled or displayed but not other firearms; or

(c) Any student while participating in a rifle competition authorized by school authorities.

NEW SECTION. **Sec. 305.** The following sections are each recodified as new sections in chapter 28A.410 RCW:

RCW 28A.405.010

RCW 28A.405.025

NEW SECTION. Sec. 306. The following sections are recodified as a new chapter in Title 28B RCW:

RCW 28A.610.010
 RCW 28A.610.020
 RCW 28A.610.030
 RCW 28A.610.040
 RCW 28A.610.050

NEW SECTION. Sec. 307. The following acts or parts of acts are each repealed:

- (1) RCW 28A.175.070 and 1994 c 245 s 6 & 1987 c 518 s 219;
- (2) RCW 28A.210.005 and 1989 1st ex.s. c 9 s 239;
- (3) RCW 28A.215.300 and 1986 c 150 s 1;
- (4) RCW 28A.215.310 and 1990 c 33 s 216 & 1986 c 150 s 2;
- (5) RCW 28A.215.320 and 1986 c 150 s 3;
- (6) RCW 28A.215.330 and 1990 c 33 s 217 & 1986 c 150 s 4; and
- (7) RCW 28A.234.010 and 1993 sp.s. c 4 s 15.

Sec. 308. RCW 28A.215.020 and 1990 c 33 s 210 are each amended to read as follows:

Expenditures under federal funds and/or state appropriations made to carry out the purposes of RCW 28A.215.010 through 28A.215.050 (~~and 28A.215.300 through 28A.215.330~~) shall be made by warrants issued by the state treasurer upon order of the superintendent of public instruction. The state board of education shall make necessary rules and regulations to carry out the purpose of RCW 28A.215.010.

Sec. 309. RCW 28A.215.030 and 1990 c 33 s 211 are each amended to read as follows:

In the event the legislature appropriates any moneys to carry out the purposes of RCW 28A.215.010 through 28A.215.050 (~~and 28A.215.300 through 28A.215.330~~), allocations therefrom may be made to school districts for the purpose of underwriting allocations made or requested from federal funds until such federal funds are available. Any school district may allocate a portion of its funds for the purpose of carrying out the provisions of RCW 28A.215.010 through 28A.215.050 (~~and 28A.215.300 through 28A.215.330~~) pending the receipt of reimbursement from funds made available by acts of congress.

Sec. 310. RCW 28A.215.050 and 1990 c 33 s 212 are each amended to read as follows:

As a supplement to the authority otherwise granted by RCW 28A.215.010 through 28A.215.050 (~~and 28A.215.300 through 28A.215.330~~) respecting the care or instruction, or both, of children in general, the board of directors of any school district may only utilize funds outside the state basic education appropriation and the state school transportation appropriation to:

(1) Contract with public and private entities to conduct all or any portion of the management and operation of a child care program at a school district site or elsewhere;

(2) Establish charges based upon costs incurred under this section and provide for the reduction or waiver of charges in individual cases based upon the financial ability of the parents or legal guardians of enrolled children to pay the charges, or upon their provision of other valuable consideration to the school district; and

(3) Transport children enrolled in a child care program to the program and to related sites using district-owned school buses and other motor vehicles, or by contracting for such transportation and related services: PROVIDED, That no child three years of age or younger shall be transported under the provisions of this section unless accompanied by a parent or guardian.

PART IV - UNFUNDED PROGRAMS

Sec. 401. RCW 28A.405.120 and 1985 c 420 s 3 are each amended to read as follows:

School districts shall require each administrator, each principal, or other supervisory personnel who has responsibility for evaluating classroom teachers to have training in evaluation procedures. ~~((The superintendent of public instruction shall provide technical assistance to the local school districts and to the educational service districts in providing training to evaluators.))~~

NEW SECTION. **Sec. 402.** The following acts or parts of acts are each repealed:

- (1) RCW 28A.175.020 and 1987 c 518 s 213;
- (2) RCW 28A.175.030 and 1990 c 33 s 160, 1989 c 209 s 1, & 1987 c 518 s 214;
- (3) RCW 28A.175.040 and 1990 c 33 s 161, 1989 c 209 s 2, & 1987 c 518 s 215;
- (4) RCW 28A.175.050 and 1990 c 33 s 162 & 1987 c 518 s 217;
- (5) RCW 28A.240.010 and 1990 c 33 s 248 & 1985 c 422 s 2;
- (6) RCW 28A.240.020 and 1985 c 422 s 1;
- (7) RCW 28A.240.030 and 1990 c 33 s 249 & 1985 c 422 s 3;
- (8) RCW 28A.300.110 and 1990 c 33 s 255, 1987 1st ex.s. c 2 s 208, 1987 c 197 s 1, & 1984 c 278 s 5;
- (9) RCW 28A.300.180 and 1989 c 146 s 3;
- (10) RCW 28A.300.200 and 1991 c 128 s 13 & 1990 c 243 s 9;
- (11) RCW 28A.415.110 and 1991 c 258 s 3;
- (12) RCW 28A.415.115 and 1991 c 258 s 4;
- (13) RCW 28A.415.220 and 1993 c 217 s 1 & 1991 c 252 s 1;
- (14) RCW 28A.600.425 and 1992 c 196 s 2;
- (15) RCW 28A.600.430 and 1992 c 196 s 3;
- (16) RCW 28A.600.435 and 1992 c 196 s 4;
- (17) RCW 28A.600.440 and 1992 c 196 s 5;

- (18) RCW 28A.600.445 and 1992 c 196 s 6;
- (19) RCW 28A.600.450 and 1992 c 196 s 7;
- (20) RCW 28A.615.060 and 1989 c 310 s 1;
- (21) RCW 28A.625.300 and 1985 c 349 s 4;
- (22) RCW 28A.630.070 and 1990 c 148 s 2;
- (23) RCW 28A.630.075 and 1990 c 148 s 3;
- (24) RCW 28A.630.300 and 1987 c 349 s 1;
- (25) RCW 28A.630.320 and 1990 c 33 s 534 & 1987 c 349 s 3;
- (26) RCW 28A.630.330 and 1990 c 33 s 535 & 1987 c 349 s 4; and
- (27) RCW 28A.630.390 and 1987 c 349 s 7.

Sec. 403. RCW 28A.415.105 and 1991 c 258 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW ((28A.415.110)) 28A.415.125 through 28A.415.140.

(1) "Cooperating organizations" means that at least one school district, one college or university, and one educational service district are involved jointly with the development of a student teaching center.

(2) "Cooperating teacher" means a teacher who holds a continuing certificate and supervises and coaches a student teacher.

(3) "Field experience" means opportunities for observation, tutoring, microteaching, extended practicums, and clinical and laboratory experiences which do not fall within the meaning of student teaching.

(4) "School setting" means a classroom in a public, common school in the state of Washington.

(5) "Student teacher" means a candidate for initial teacher certification who is in a state board of education-approved, or regionally or nationally accredited teacher preparation program in a school setting as part of the field-based component of their preparation program.

(6) "Student teaching" means the full quarter or semester in a school setting during which the student teacher observes the cooperating teacher, participates in instructional activities, and assumes both part-time and full-time teaching responsibilities under the supervision of the cooperating teacher.

(7) "Student teaching center" means the program established to provide student teachers in a geographic region of the state with special support and training as part of their teacher preparation program.

(8) "Supervisor or university supervisor" means the regular or adjunct faculty member, or college or university-approved designee, who assists and supervises the work of cooperating teachers and student teachers.

Sec. 404. RCW 28B.90.005 and 1993 c 181 s 1 are each amended to read as follows:

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. 405. RCW 28A.415.120 and 1991 c 258 s 5 are each repealed.

PART V - REPORTS

Sec. 501. RCW 28A.215.170 and 1994 c 166 s 9 are each amended to read as follows:

~~((The governor shall report to the legislature before each regular session of the legislature convening in an odd-numbered year, on the current status of the program, the state-wide need for early childhood program services, and the plans to address these needs. The department shall consult with the office of the superintendent of public instruction in the preparation of the biennial report and on all issues of mutual concern addressed in the report.~~

The governor's report shall include specific recommendations on at least the following issues:

~~(1) The desired relationships of a state-funded early childhood education and assistance program with the common school system;~~

~~(2) The types of children and their needs that the program should serve;~~

~~(3) The appropriate level of state support for implementing a comprehensive early childhood education and assistance program for all eligible children, including related programs to prepare instructors and provide facilities, equipment, and transportation;~~

~~(4) The state administrative structure necessary to implement the program; and~~

~~(5) The establishment of a system))~~ The department shall annually report to the governor and the legislature on the findings of the longitudinal study undertaken to examine and monitor the effectiveness of early childhood educational and assistance services for eligible children to measure, among other elements, if possible, how the average level of performance of children completing this program compare to the average level of performance of all state students in their grade level, and to the average level of performance of those eligible students who did not have access to this program. The evaluation system shall examine how the percentage of these children needing access to special education or remedial programs compares to the overall percentage of

children needing such services and compares to the percentage of eligible students who did not have access to this program needing such services.

Sec. 502. RCW 28A.320.200 and 1990 c 33 s 333 are each amended to read as follows:

(1) Each school district board of directors shall develop a schedule and process by which each public school within its jurisdiction shall undertake self-study procedures on a regular basis: PROVIDED, That districts may allow two or more elementary school buildings in the district to undertake jointly the self-study process. Each school may follow the accreditation process developed by the state board of education under RCW 28A.305.130(6), although no school is required to file for actual accreditation, or the school may follow a self-study process developed locally. The initial self-study process within each district shall begin by September 1, 1986, and should be completed for all schools within a district by the end of the 1990-91 school year.

(2) Any self-study process must include the participation of staff, parents, members of the community, and students, where appropriate to their age.

(3) The self-study process that is used must focus upon the quality and appropriateness of the school's educational program and the results of its operational effort. The primary emphasis throughout the process shall be placed upon:

- (a) Achieving educational excellence and equity;
- (b) Building stronger links with the community; and
- (c) Reaching consensus upon educational expectations through community involvement and corresponding school management.

(4) The state board of education shall adopt rules governing procedural criteria. Such rules should be flexible so as to accommodate local goals and circumstances. The rules may allow for waiver of the self-study for economic reasons and may also allow for waiver of the initial self-study if a district or its schools have participated successfully in an official accreditation process or in a similar assessment of educational programs within the last three years. The self-study process shall be conducted on a cyclical basis every seven years following the initial 1990-91 period.

(5) The superintendent of public instruction shall provide training to assist districts in their self-studies.

~~((6) Each district shall report every two years to the superintendent of public instruction on the scheduling and implementation of their self-study activities. The report shall include information about how the district and each school within the district have addressed the issue of class size and staffing patterns.))~~

Sec. 503. RCW 28A.330.100 and 1991 c 116 s 17 are each amended to read as follows:

Every board of directors of a school district of the first class, in addition to the general powers for directors enumerated in this title, shall have the power:

(1) To employ for a term of not exceeding three years a superintendent of schools of the district, and for cause to dismiss him or her; and to fix his or her duties and compensation.

(2) To employ, and for cause dismiss one or more assistant superintendents and to define their duties and fix their compensation.

(3) To employ a business manager, attorneys, architects, inspectors of construction, superintendents of buildings and a superintendent of supplies, all of whom shall serve at the board's pleasure, and to prescribe their duties and fix their compensation.

(4) To employ, and for cause dismiss, supervisors of instruction and to define their duties and fix their compensation.

(5) To prescribe a course of study and a program of exercises which shall be consistent with the course of study prepared by the state board of education for the use of the common schools of this state.

(6) To, in addition to the minimum requirements imposed by this title establish and maintain such grades and departments, including night, high, kindergarten, vocational training and, except as otherwise provided by law, industrial schools, and schools and departments for the education and training of any class or classes of handicapped youth, as in the judgment of the board, best shall promote the interests of education in the district.

(7) To determine the length of time over and above one hundred eighty days that school shall be maintained: PROVIDED, That for purposes of apportionment no district shall be credited with more than one hundred and eighty-three days' attendance in any school year; and to fix the time for annual opening and closing of schools and for the daily dismissal of pupils before the regular time for closing schools.

(8) To maintain a shop and repair department, and to employ, and for cause dismiss, a foreman and the necessary help for the maintenance and conduct thereof.

(9) To provide free textbooks and supplies for all children attending school.

(10) To require of the officers or employees of the district to give a bond for the honest performance of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all bonds required of all such officers or employees to be paid by the district: PROVIDED, That the board may, by written policy, allow that such bonds may include a deductible proviso not to exceed two percent of the officer's or employee's annual salary.

(11) To prohibit all secret fraternities and sororities among the students in any of the schools of the said districts.

(12) To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting the safety and welfare of the public schools of the district who shall serve at the board's pleasure(~~(+ the school district medical inspector or authorized~~

~~deputies shall make monthly inspections of each school in the district and report the condition of the same to the board of education and board of health);~~ PROVIDED, That children shall not be required to submit to vaccination against the will of their parents or guardian.

Sec. 504. RCW 28A.400.306 and 1992 c 159 s 9 are each amended to read as follows:

The state patrol shall accept fingerprints obtained under this chapter only if it can ensure that the patrol will not retain a record of the fingerprints after the check is complete. It shall not forward fingerprints obtained under this chapter to the federal bureau of investigation unless it can ensure that the federal bureau of investigation will not retain a record of the fingerprints after the check is complete. ~~((The state patrol shall report to the house of representatives appropriations committee and the senate ways and means committee on measures taken to implement this section before accepting any fingerprints obtained under this chapter.))~~

Sec. 505. RCW 28A.630.885 and 1994 c 245 s 13 are each amended to read as follows:

(1) The Washington commission on student learning is hereby established. The primary purposes of the commission are to identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, to develop student assessment and school accountability systems, to review current school district data reporting requirements and make recommendations on what data is necessary for the purposes of accountability and meeting state information needs, 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 five members appointed no later than 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 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.

(2) The commission shall establish advisory committees. Membership of the 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.

(3) The commission, with the assistance of the advisory committees, shall:

(a) Develop essential academic learning requirements based on the student learning goals 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)(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, 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 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 have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(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) 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 commission shall make recommendations to the state board of education 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) 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 academic assessment system;

(g) Develop recommendations for consideration by the higher education coordinating board for adopting college and university entrance requirements for public school students that are consistent with the essential academic learning requirements and the certificate of mastery;

(h) Review current school district data reporting requirements for the purposes of accountability and meeting state information needs. The commission on student learning shall report recommendations to the joint select committee on education restructuring by September 15, 1996, on:

(i) 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

(ii) What data is necessary pertaining to school district reports under the accountability systems developed by the commission on student learning under this section;

(j) By December 1, 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 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~~)) (i) on September 1, 2000;

~~((h))~~ (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

~~((j))~~ (k) Make recommendations to the legislature and take other actions necessary or desirable to help students meet the student learning goals.

(4) The commission shall coordinate its activities with the state board of education and the office of the superintendent of public instruction.

(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.

(6) The commission shall select an entity to provide staff support and the office of the superintendent of public instruction shall provide administrative oversight and be the fiscal agent for the commission. The commission may direct the office of 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.

(7) Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

Sec. 506. RCW 28A.630.952 and 1994 c 245 s 4 are each amended to read as follows:

(1) In addition to the duties in RCW 28A.630.951, the joint select committee on education restructuring shall review all laws pertaining to K-12 public education and to educator preparation and certification 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))~~ the school district data reporting requirements for the purposes of accountability and meeting state information needs reported by the commission on student learning under RCW 28A.630.885. The joint select committee shall report its recommendations to the legislature by January 1996 ~~((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)(b)).~~

Sec. 507. RCW 28A.650.015 and 1994 c 245 s 2 are each amended to read as follows:

(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 September 1, 1994, 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. 508. The following acts or parts of acts are each repealed:

(1) RCW 28A.205.060 and 1993 c 211 s 5 & 1985 c 434 s 2;

(2) RCW 28A.225.180 and 1990 c 33 s 233 & 1969 ex.s. c 223 s 28A.58.215;

(3) RCW 28A.225.320 and 1990 1st ex.s. c 9 s 210;

(4) RCW 28A.300.210 and 1991 c 201 s 18;

(5) RCW 28A.335.310 and 1993 c 461 s 3; and

(6) RCW 28A.340.050 and 1990 c 33 s 370 & 1988 c 268 s 7.

PART VI - PERMISSIVE LANGUAGE

Sec. 601. RCW 28A.180.080 and 1990 c 33 s 167 are each amended to read as follows:

The superintendent of public instruction shall prepare and submit biennially to the governor and the legislature a budget request for bilingual instruction programs. Moneys appropriated by the legislature for the purposes of RCW 28A.180.010 through 28A.180.080 shall be allocated by the superintendent of public instruction to school districts for the sole purpose of operating an approved bilingual instruction program; priorities for funding shall exist for the early elementary grades. No moneys shall be allocated pursuant to this section to fund more than three school years of bilingual instruction for each eligible pupil within a district: PROVIDED, That such moneys may be allocated to fund more than three school years of bilingual instruction for any pupil who fails to demonstrate improvement in English language skills adequate to remove impairment of learning when taught only in English. The superintendent of public instruction shall set standards and approve a test for the measurement of such English language skills. ~~((School districts are hereby empowered to accept grants, gifts, donations, devices and other gratuities from private and public sources to aid in accomplishing the purposes of RCW 28A.180.010 through 28A.180.080.))~~

Sec. 602. RCW 28A.225.220 and 1993 c 336 s 1008 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)), and may charge the adults reasonable tuition.~~

(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 not charge transfer fees or tuition for nonresident students enrolled under subsection (3) of this section and RCW 28A.225.225. 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.

Sec. 603. RCW 28A.225.250 and 1969 c 130 s 11 are each amended to read as follows:

~~((Notwithstanding any other provision of law,))~~ (1) The state superintendent of public instruction is directed and authorized to develop and adopt rules ~~((and regulations to implement such voluntary, tuition free attendance programs among school districts that he))~~ governing cooperative programs between and among school districts and educational service districts that the superintendent deems necessary ((for the expressed purpose of)) to assure:

~~((1) Providing educational opportunities, including vocational skills programs, not otherwise provided;~~

~~(2) Avoiding unnecessary duplication of specialized or unusually expensive educational programs and facilities; or~~

~~(3) Improving racial balance within and among school districts: PROVIDED, That no voluntary, tuition-free attendance program among school districts developed by the superintendent of public instruction shall be instituted unless such program receives the approval of the boards of directors of the districts))~~

(a) Correct calculation of state apportionment payments;

(b) Proper budgeting and accounting for interdistrict cooperative program revenues and expenditures;

(c) Reporting of student, personnel, and fiscal data to meet state needs; and

(d) Protection of the right of residents of Washington under twenty-one years of age to a tuition-free program of basic education.

(2) Unless specifically authorized in law, interdistrict cooperative programs shall not be designed to systematically increase state allocation above amounts required if services were provided by the resident school district.

Sec. 604. RCW 28A.335.160 and 1990 c 33 s 359 are each amended to read as follows:

Any school district may cooperate with one or more school districts in the ((following:

(1) ~~The~~) joint financing, planning, construction, equipping and operating of any educational facility otherwise authorized by law: PROVIDED, That any cooperative financing plan involving the construction of school plant facilities must be approved by the state board of education pursuant to such rules as may now or hereafter be promulgated relating to state approval of school construction.

~~((2) The joint maintenance and operation of educational programs or services (a) either as a part of the operation of a joint facility or otherwise, (b) either on a full or part time attendance basis, and (c) either on a regular one hundred eighty day school year or extended school year: PROVIDED, That any such joint program or service must be operated pursuant to a written agreement approved by the superintendent of public instruction pursuant to rules and regulations promulgated therefor. In establishing rules and regulations the state superintendent shall consider, among such other factors as the superintendent deems appropriate, the economic feasibility of said services and programs, the educational and administrative scope of said agreement and the need for said programs or services.~~

~~Notwithstanding any other provision of the law, the state superintendent of public instruction shall establish rules and regulations for the apportionment of attendance credits for such students as are enrolled in a jointly operated facility or program, including apportionment for approved part time and extended school year attendance.))~~

NEW SECTION. Sec. 605. The following acts or parts of acts are each repealed:

(1) RCW 28A.170.100 and 1991 c 116 s 24, 1990 c 33 s 159, & 1989 c 271 s 313;

(2) RCW 28A.175.080 and 1989 c 233 s 7;

- (3) RCW 28A.180.050 and 1984 c 124 s 4, & 1979 c 95 s 4;
 (4) RCW 28A.180.070 and 1990 c 33 s 166 & 1984 c 124 s 6; and
 (5) RCW 28A.415.050 and 1985 c 419 s 2.

PART VII - MANDATES ON SCHOOL DISTRICT OPERATIONS

Sec. 701. RCW 28A.405.070 and 1989 c 206 s 1 are each amended to read as follows:

~~((In filling a position))~~ Effective December 31, 1995, school and educational service districts shall ~~((consider applications from two individuals wishing to share a job. All announcements of job openings shall contain a statement indicating the district will accept applications from individuals wishing to share the position. Job sharing shall be available to certificated staff))~~ have a policy on the sharing of jobs by district employees.

Sec. 702. RCW 28A.405.460 and 1991 c 116 s 15 are each amended to read as follows:

All certificated employees of school districts shall be allowed a reasonable lunch period of not less than thirty continuous minutes per day during the regular school lunch periods and during which they shall have no assigned duties; PROVIDED, That local districts may work out other arrangements with the consent of all affected parties.

NEW SECTION. **Sec. 703.** RCW 28A.400.150 and 1990 c 33 s 380 & 1969 ex.s. c 223 s 28A.58.170 are each repealed.

PART VIII - MISCELLANEOUS

NEW SECTION. **Sec. 801.** The repeal of any programs that are not funded as of the effective date of this section is not intended to comment on the value of the services provided by the programs. The repeal of statutes in chapter . . . , Laws of 1995 (this act) does not affect the general authority of school districts to provide services to accomplish the purposes of these programs. The deletion or repeal of language that permitted school districts to carry out specific activities that would be within their general authority is not intended to affect the general authority of school districts to continue to carry out those activities.

NEW SECTION. **Sec. 802.** Sections 109 through 112 of this act shall expire June 30, 1999.

NEW SECTION. **Sec. 803.** Section 505 of this act shall expire September 1, 1998.

NEW SECTION. **Sec. 804.** Section 506 of this act shall expire December 1, 2001.

NEW SECTION. **Sec. 805.** Part headings and the table of contents as used in this act do not constitute any part of the law.

Passed the Senate April 22, 1995.

Passed the House April 21, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

CHAPTER 336

[Substitute Senate Bill 5365]

UNIFORM DISCIPLINARY ACT AMENDMENTS

AN ACT Relating to the uniform disciplinary act; amending RCW 18.130.020, 18.130.060, 18.130.095, 18.130.098, 18.130.170, and 18.130.180; reenacting and amending RCW 18.130.040 and 18.130.050; adding a new section to chapter 18.30 RCW; adding a new section to chapter 18.130 RCW; adding a new section; and declaring an emergency.

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

Sec. 1. RCW 18.130.020 and 1994 sp.s. c 9 s 602 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Disciplining authority" means the agency, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of this chapter or a chapter specified under RCW 18.130.040.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health or the secretary's designee.

(4) "Board" means any of those boards specified in RCW 18.130.040.

(5) "Commission" means any of the commissions specified in RCW 18.130.040.

(6) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.130.040 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a consumer, through offerings, advertisements, or use of a professional title or designation, that the individual is qualified to practice a profession or operate a business identified in RCW 18.130.040, without holding a valid, unexpired, unrevoked, and unsuspended license to do so.

(7) "Disciplinary action" means sanctions identified in RCW 18.130.160.

(8) "Practice review" means an investigative audit of records related to the complaint, without prior identification of specific patient or consumer names, or an assessment of the conditions, circumstances, and methods of the professional's practice related to the complaint, to determine whether unprofessional conduct may have been committed.

(9) "Health agency" means city and county health departments and the department of health.

(10) "License," "licensing," and "licensure" shall be deemed equivalent to the terms "license," "licensing," "licensure," "certificate," "certification," and "registration" as those terms are defined in RCW 18.120.020.

Sec. 2. RCW 18.130.040 and 1995 c 1 s 19 (Initiative Measure No. 607), 1994 sp.s. c 9 s 603, and 1994 c 17 s 19 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions 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 and x-ray technicians registered 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 under chapter 18.52C RCW;
 - (xii) Nursing assistants registered or certified under chapter 18.79 RCW;
 - (xiii) Health care assistants certified under chapter 18.135 RCW;
 - (xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;
 - (xv) Sex offender treatment providers certified under chapter 18.155 RCW;
- ((and))
- (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205; and
 - (xvii) Denturists licensed under chapter 18.30 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The podiatric medical board as established in chapter 18.22 RCW;
- (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
- (iii) The dental quality assurance commission as established in chapter 18.32 RCW;
- (iv) The board on fitting and dispensing of hearing aids as established in chapter 18.35 RCW;
- (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

- (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
- (vii) 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;
- (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
- (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
- (x) The board of physical therapy as established in chapter 18.74 RCW;
- (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
- (xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;
- (xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and
- (xiv) The veterinary board of governors as established in chapter 18.92 RCW(~~and~~
- ~~(xv) Denturists licensed under chapter 18.30 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. 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.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the uniform disciplinary act, among the disciplining authorities listed in subsection (2) of this section.

NEW SECTION. Sec. 3. A new section is added to chapter 18.30 RCW to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of licenses, unauthorized practice, and the discipline of persons licensed under this chapter. The secretary shall be the disciplinary authority under this chapter.

Sec. 4. RCW 18.130.050 and 1993 c 367 s 21 and 1993 c 367 s 5 are each reenacted and 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 a presiding officer as authorized in RCW 18.130.095(3) or 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 unless the disciplining authority elects to delegate in writing the final decision to the presiding officer;

(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 designate individuals authorized to sign subpoenas and statements of charges;

(15) 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;

(16) 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. 5. RCW 18.130.060 and 1991 c 3 s 269 are each amended to read as follows:

In addition to the authority specified in RCW 18.130.050, the secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) Upon the request of a board, to appoint not more than three pro tem members for the purpose of participating as members of one or more committees of the board in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board. While serving as board members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular members of the board. The chairperson of a committee shall be a regular member of the board appointed by the board chairperson. Committees have authority to act as directed by the board with respect to all matters concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters subject to the jurisdiction of the board. The authority to act through committees does not restrict the authority of the board to act as a single body at any phase of proceedings within the board's jurisdiction. Board committees may make interim orders and issue final decisions with respect to matters and cases delegated to the committee by the board. Final decisions may be appealed as provided in chapter 34.05 RCW, the Administrative Procedure Act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency adjudicative proceeding as authorized by RCW 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority;

(5) To have the health professions regulatory program establish a system to recruit potential public members, to review the qualifications of such potential members, and to provide orientation to those public members appointed pursuant to law by the governor or the secretary to the boards and commissions specified in RCW 18.130.040(2)(b), and to the advisory committees and councils for professions specified in RCW 18.130.040(2)(a).

Sec. 6. RCW 18.130.095 and 1993 c 367 s 2 are each amended to read as follows:

(1) The secretary, in consultation with the disciplining authorities, 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))~~ periods for assessment, investigation, charging, discovery, settlement, and ~~((scheduling hearings))~~ adjudication of complaints, and shall include enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent.

(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))~~ disciplining 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))~~ disciplining authority authorized under this chapter. Except as provided in RCW 18.130.050(8), the presiding officer shall not vote on or make 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))~~ disciplining authorities, shall adopt procedures for implementing this subsection. ~~((This subsection shall not apply to the board of funeral directors and embalmers.))~~

(4) The uniform procedural rules shall be adopted by all disciplining authorities listed in RCW 18.130.040(2), and shall be used for all adjudicative proceedings conducted under this chapter, as defined by chapter 34.05 RCW. The uniform procedural rules shall address the use of a presiding officer authorized in subsection (3) of this section to determine and issue decisions on all legal issues and motions arising during adjudicative proceedings.

Sec. 7. RCW 18.130.098 and 1994 sp.s. c 9 s 604 are each amended to read as follows:

(1) The settlement process must be substantially uniform for licensees governed by ~~((regulatory entities having authority))~~ disciplining authorities under this chapter. The disciplinary authorities may also use alternative dispute resolution to resolve complaints during adjudicative proceedings.

(2) Disclosure of the identity of reviewing disciplining authority members who participate in the settlement process is available to the respondent~~((s))~~ or ~~((their legal))~~ his or her representative upon request.

(3) The settlement conference will occur only if a settlement is not achieved through written documents. The respondent~~((s))~~ will have the opportunity to

conference either by phone or in person with the reviewing disciplining authority member if the respondent chooses. The respondent~~((s))~~ may also have ~~((their))~~ his or her attorney conference either by phone or in person with the reviewing disciplining authority member without the respondent being present personally.

(4) If the respondent wants to meet in person with the reviewing disciplining authority member, he or she will travel to the reviewing ~~((disciplinary))~~ disciplining authority member and have such a conference with ~~((the attorney general))~~ a department representative in attendance either by phone or in person.

Sec. 8. RCW 18.130.170 and 1987 c 150 s 6 are each amended to read as follows:

(1) If the disciplining authority believes a license holder or applicant may be unable to practice with reasonable skill and safety to consumers by reason of any mental or physical condition, a statement of charges in the name of the disciplining authority shall be served on the license holder or applicant and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder or applicant to practice with reasonable skill and safety. If the disciplining authority determines that the license holder or applicant is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the disciplining authority shall impose such sanctions under RCW 18.130.160 as is deemed necessary to protect the public.

(2)(a) In investigating or adjudicating a complaint or report that a license holder or applicant may be unable to practice with reasonable skill or safety by reason of any mental or physical condition, the disciplining authority may require a license holder or applicant to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the disciplining authority. The license holder or applicant shall be provided written notice of the disciplining authority's intent to order a mental or physical examination, which notice shall include: (i) A statement of the specific conduct, event, or circumstances justifying an examination; (ii) a summary of the evidence supporting the disciplining authority's concern that the license holder or applicant may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, and the grounds for believing such evidence to be credible and reliable; (iii) a statement of the nature, purpose, scope, and content of the intended examination; (iv) a statement that the license holder or applicant has the right to respond in writing within twenty days to challenge the disciplining authority's grounds for ordering an examination or to challenge the manner or form of the examination; and (v) a statement that if the license holder or applicant timely responds to the notice of intent, then the license holder or applicant will not be required to submit to the examination while the response is under consideration.

(b) Upon submission of a timely response to the notice of intent to order a mental or physical examination, the license holder or applicant shall have an

opportunity to respond to or refute such an order by submission of evidence or written argument or both. The evidence and written argument supporting and opposing the mental or physical examination shall be reviewed by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder or applicant or a neutral decision maker approved by the disciplining authority. The reviewing panel of the disciplining authority or the approved neutral decision maker may, in its discretion, ask for oral argument from the parties. The reviewing panel of the disciplining authority or the approved neutral decision maker shall prepare a written decision as to whether: There is reasonable cause to believe that the license holder or applicant may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, or the manner or form of the mental or physical examination is appropriate, or both.

(c) Upon receipt by the disciplining authority of the written decision, or upon the failure of the license holder or applicant to timely respond to the notice of intent, the disciplining authority may issue an order requiring the license holder or applicant to undergo a mental or physical examination. All such mental or physical examinations shall be narrowly tailored to address only the alleged mental or physical condition and the ability of the license holder or applicant to practice with reasonable skill and safety. An order of the disciplining authority requiring the license holder or applicant to undergo a mental or physical examination is not a final order for purposes of appeal. The cost of the examinations ordered by the disciplining authority shall be paid out of the health professions account. In addition to any examinations ordered by the disciplining authority, the licensee may submit physical or mental examination reports from licensed or certified health professionals of the license holder's or applicant's choosing and expense. ~~((Failure of a license holder or applicant to submit to examination when directed constitutes grounds for immediate suspension or denial of the license, consequent upon which a default and final order may be entered without the taking of testimony or presentations of evidence, unless the failure was due to circumstances beyond the person's control.))~~

(d) If the disciplining authority finds that a license holder or applicant has failed to submit to a properly ordered mental or physical examination, then the disciplining authority may order appropriate action or discipline under RCW 18.130.180(9), unless the failure was due to circumstances beyond the person's control. However, no such action or discipline may be imposed unless the license holder or applicant has had the notice and opportunity to challenge the disciplining authority's grounds for ordering the examination, to challenge the manner and form to assert an other defenses and to have such challenges or defenses considered by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder or applicant or a neutral decision maker approved by the disciplining authority, as previously set forth in this section. Further, the action or discipline ordered by

the disciplining authority shall not be more severe than a suspension of the license, certification, registration or application until such time as the license holder or applicant complies with the properly ordered mental or physical examination.

(e) Nothing in this section shall restrict the power of a disciplining authority to act in an emergency under RCW 34.05.422(4), 34.05.479, and 18.130.050(7).

(f) A determination by a court of competent jurisdiction that a license holder or applicant is mentally incompetent or mentally ill is presumptive evidence of the license holder's or applicant's inability to practice with reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity, at his or her expense, to demonstrate that the individual can resume competent practice with reasonable skill and safety to the consumer.

(3) For the purpose of subsection (2) of this section, an applicant or license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination when directed in writing by the disciplining authority and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the disciplining authority on the ground that the testimony or reports constitute privileged communications.

Sec. 9. RCW 18.130.180 and 1993 c 367 s 22 are each 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))~~ any health care 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; or

(d) Not providing reasonable and timely access for authorized representatives of the disciplining authority seeking to perform practice reviews at facilities utilized by the license holder;

(9) Failure to comply with an order issued by the ~~((disciplinatory))~~ disciplining authority or a stipulation for informal disposition entered into with the ~~((disciplinatory))~~ disciplining 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, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

(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. 10. The secretary of health shall coordinate and assist the regulatory boards and commissions of the health professions with prescriptive authority in the development of uniform guidelines for addressing opiate therapy for acute pain, and chronic pain associated with cancer and other terminal diseases, or other chronic or intractable pain conditions. The purpose of the guidelines is to assure the provision of effective medical treatment in accordance with recognized national standards and consistent with requirements of the public health and safety.

NEW SECTION. Sec. 11. Sections 2 and 3 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 Senate April 23, 1995.
Passed the House April 23, 1995.
Approved by the Governor May 11, 1995.
Filed in Office of Secretary of State May 11, 1995.

CHAPTER 337

[Substitute Senate Bill 5374]

LIMITED LIABILITY PARTNERSHIPS

AN ACT Relating to registered limited liability partnerships; amending RCW 25.15.005, 25.15.045, 25.15.060, 25.15.085, 25.15.130, 25.15.220, 25.15.250, 25.15.280, 25.15.310, and 24.06.045, adding new sections to chapter 25.04 RCW; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. This subchapter applies to limited liability partnerships. All other provisions of this chapter, not in conflict with this subchapter, also apply.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this subchapter.

(1) "Limited liability partnership" or "partnership" means a partnership formed pursuant to an agreement governed by the laws of this state, registered under section 6 of this act.

(2) "Foreign limited liability partnership" means a limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction.

NEW SECTION. Sec. 3. (1) To become and to continue as a limited liability partnership, a partnership shall file with the secretary of state an application stating the name of the partnership; the address of its principal office; if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state which the partnership will be required to maintain; the number of partners; a brief statement of the business in which the partnership engages; any other matters that the partnership determines to include; and that the partnership thereby applies for status as a limited liability partnership.

(2) The application shall be executed by a majority in interest of the partners or by one or more partners authorized to execute an application.

(3) The application shall be accompanied by a fee of one hundred seventy-five dollars for each partnership.

(4) The secretary of state shall register as a limited liability partnership any partnership that submits a completed application with the required fee.

(5) A partnership registered under this section shall pay an annual fee, in each year following the year in which its application is filed, on a date and in an amount specified by the secretary of state. The fee must be accompanied by a notice, on a form provided by the secretary of state, of the number of partners

currently in the partnership and of any material changes in the information contained in the partnership's application for registration.

(6) Registration is effective immediately after the date an application is filed, and remains effective until: (a) It is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice executed by a majority in interest of the partners or by one or more partners authorized to execute a withdrawal notice; or (b) thirty days after receipt by the partnership of a notice from the secretary of state, which notice shall be sent by certified mail, return receipt requested, that the partnership has failed to make timely payment of the annual fee specified in subsection (5) of this section, unless the fee is paid within such a thirty-day period.

(7) The status of a partnership as a limited liability partnership, and the liability of the partners thereof, shall not be affected by: (a) Errors in the information stated in an application under subsection (1) of this section or a notice under subsection (5) of this section; or (b) changes after the filing of such an application or notice in the information stated in the application or notice.

(8) The secretary of state may provide forms for the application under subsection (1) of this section or a notice under subsection (5) of this section.

NEW SECTION. Sec. 4. The name of a limited liability partnership shall contain the words "limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

NEW SECTION. Sec. 5. A person or group of persons licensed or otherwise legally authorized to render professional services, as defined in RCW 18.100.030, within this state may organize and become a member or members of a limited liability partnership under the provisions of this chapter for the purposes of rendering professional service. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a limited liability partnership organized for the purpose of rendering the same professional services. Nothing in this section prohibits a limited liability partnership from rendering professional services outside this state through individuals who are not duly licensed or otherwise legally authorized to render such professional services within this state.

NEW SECTION. Sec. 6. (1) A limited liability partnership formed and existing under this chapter, may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

(2) It is the intent of the legislature that the legal existence of a limited liability partnership formed and existing under this chapter be recognized outside the boundaries of this state and that the laws of this state governing a limited liability partnership transacting business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

(3) The internal affairs of a partnership, including a limited liability partnership formed and existing under this chapter, including the liability of partners for debts, obligations, and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of this state.

(4) Subject to any statutes for the regulation and control of specific types of business, a foreign limited liability partnership, formed and existing under the laws of another jurisdiction, may do business in this state provided it registers with the secretary of state under this chapter in the same manner as a limited liability partnership.

(5) It is the policy of this state that the internal affairs of a foreign limited liability partnership, including the liability of partners for debts, obligations, and liabilities of or chargeable to partnerships, shall be subject to and governed by the laws of such other jurisdiction. However, a foreign limited liability partnership formed and existing under the laws of another jurisdiction is subject to section 7 of this act if it renders professional services, as defined in RCW 18.100.030, in this state.

NEW SECTION. Sec. 7. (1) Except as provided in subsection (2) of this section, all partners are liable:

(a) Jointly and severally for everything chargeable to the partnership under RCW 25.04.130 and 25.04.140; and

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract;

(c) Except that:

(i) In no event shall a trustee or personal representative, a fiduciary, acting as a partner have personal liability except as provided in RCW 11.98.110 (2) and (4);

(ii) Any such liability under this section shall be satisfied first from the partnership assets and second from the trust or estate; and

(iii) If a fiduciary is liable, the fiduciary is entitled to indemnification first from the partnership assets and second from the trust or estate.

(2) Subject to subsections (3) and (5) of this section, a partner in a limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise for debts, obligations, and liabilities of or chargeable to the partnership, whether in tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct, or malpractice committed in the course of the partnership business by another partner or an employee, agent, or representative of the partnership.

(3) Subsection (2) of this section shall not affect the liability of a partner in a limited liability partnership for his or her own omissions, negligence, wrongful acts, misconduct, or malpractice or that of any person under his or her direct supervision and control.

(4) A partner in a limited liability partnership is not a proper party to a proceeding by or against a limited liability partnership, the object of which is to recover damages or enforce the obligations arising from omissions, negligence,

wrongful acts, misconduct, or malpractice described in subsection (2) of this section, unless such partner is personally liable under subsection (3) or (5) of this section.

(5) If the partners of a limited liability partnership or foreign limited liability partnership are required to be licensed to provide professional services, as defined in RCW 18.100.030, and the partnership fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, deposit in trust, bank escrow of cash, bank certificates of deposit, United States Treasury obligations, bank letter of credit, insurance company bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or such greater amount, not to exceed three million dollars, as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the businesses within the profession or specialty, then the partners shall be personally liable to the extent that, had such insurance, bond, deposit in trust, bank escrow of cash, bank certificates of deposit, United States Treasury obligations, bank letter of credit, insurance company bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

NEW SECTION. Sec. 8. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his or her contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and except as provided in section 7(2) of this act, each partner must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his or her share in the profits.

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him or her in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(3) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he or she agreed to contribute, shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him or her only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his or her services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

NEW SECTION. Sec. 9. Where a dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his or her copartners for his or her share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(1) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

(2) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy; or

(3) The liability is for a debt, obligation, or liability for which the partner is not liable as provided in section 7(2) of this act.

NEW SECTION. Sec. 10. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself or herself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for those obligations of the partnership incurred while he or she was a partner and for which he or she was liable under section 7 of this act, but subject to the prior payment of his or her separate debts.

NEW SECTION. Sec. 11. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) The partnership property;

(b) The contributions of the partners specified in subsection (4) of this section.

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) Those owing to creditors other than partners;

(b) Those owing to partners other than for capital and profits;

(c) Those owing to partners in respect of capital;

(d) Those owing to partners in respect of profits.

(3) The assets shall be applied in the order of their declaration in subsection (1) of this section to the satisfaction of the liabilities.

(4) Except as provided in section 7(2) of this act: (a) The partners shall contribute, as provided by section 8(1) of this act the amount necessary to satisfy the liabilities; and (b) if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contribution specified in subsection (4) of this section.

(6) Any partner or his or her legal representative shall have the right to enforce the contributions specified in subsection (4) of this section, to the extent of the amount which he or she has paid in excess of his or her share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in subsection (4) of this section.

(8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(9) Where a partner has become bankrupt or his or her estate is insolvent the claims against his or her separate property shall rank in the following order:

(a) Those owing to separate creditors;

(b) Those owing to partnership creditors;

(c) Those owing to partners by way of contribution.

NEW SECTION. Sec. 12. Sections 1 through 11 of this act are each added to chapter 25.04 RCW and codified with the subchapter heading of "limited liability partnerships."

Sec. 13. RCW 25.15.005 and 1994 c 211 s 101 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Certificate of formation" means the certificate referred to in RCW 25.15.070, and the certificate as amended.

(2) "Event of dissociation" means an event that causes a person to cease to be a member as provided in RCW 25.15.130.

(3) "Foreign limited liability company" means an entity that is formed under:

(a) ~~((An unincorporated enterprise;~~

~~(b) Organized under the))~~ The limited liability company laws of ((a)) any state other than ((the laws of)) this state, or ((under the))

(b) The laws of any foreign country((;

~~(e) Organized~~) that is: (A) An unincorporated association, (B) formed under a statute pursuant to which an ~~((enterprise))~~ association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity~~((s))~~, and ~~((d) Is)~~ (C) not required, in order to transact business or conduct affairs in this state, to be registered or ((organized under any statute of this state other than this chapter)) qualified under Title 23B or 24 RCW, or any other chapter of the Revised Code of Washington authorizing the formation of a domestic entity and the registration or qualification in this state of similar entities formed under the laws of a jurisdiction other than this state.

(4) "Limited liability company" and "domestic limited liability company" means a limited liability company organized and existing under this chapter.

(5) "Limited liability company agreement" means any written agreement as to the affairs of a limited liability company and the conduct of its business which is binding upon all of the members.

(6) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(7) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its certificate of formation that it is to be managed by managers, the person, or persons designated in accordance with RCW 25.15.150(2).

(8) "Member" means a person who has been admitted to a limited liability company as a member as provided in RCW 25.15.115 and who has not been dissociated from the limited liability company.

(9) "Person" means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee, or any other individual or entity in its own or any representative capacity.

(10) "Professional limited liability company" means a limited liability company which is organized for the purpose of rendering professional service and whose certificate of formation sets forth that it is a professional limited liability company subject to RCW 25.15.045.

(11) "Professional service" means ~~((any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization, including, but not by way of limitation, certified public accountants, architects, veterinarians, attorneys at law, and health professions regulated under chapter 18.130 RCW))~~ the same as defined under RCW 18.100.030.

(12) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the state of Washington.

Sec. 14. RCW 25.15.045 and 1994 c 211 s 109 are each amended to read as follows:

(1) A person or group of persons licensed or otherwise legally authorized to render professional services within this state may organize and become a member or members of a professional limited liability company under the provisions of this chapter for the purposes of rendering professional service. A "professional limited liability company" is subject to all the provisions of chapter 18.100 RCW that apply to a professional corporation, and its managers, members, agents, and employees shall be subject to all the provisions of chapter 18.100 RCW that apply to the directors, officers, shareholders, agents, or employees of a professional corporation, except as provided otherwise in this section. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a professional limited liability company organized for the purpose of rendering the same professional services. Nothing in this section prohibits a professional limited liability company from rendering professional services outside this state through individuals who are not duly licensed or otherwise legally authorized to render such professional services within this state. Notwithstanding RCW 18.100.065, persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional limited liability company so long as each member personally engaged in the practice of the profession in this state is duly licensed or otherwise legally authorized to practice the profession in this state and:

(a) At least one manager of the company is duly licensed or otherwise legally authorized to practice the profession in this state; ~~((and))~~ or

(b) Each ~~((resident manager or))~~ member in charge of an office of the company in this state ~~((and each resident manager or member personally engaged in this state in the practice of the profession))~~ is duly licensed or otherwise legally authorized to practice the profession in this state.

(2) If the company's members are required to be licensed to practice such profession, and the company fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or such greater amount as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the business, then the company's members shall be personally liable to the extent that, had such insurance, bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

(3) For purposes of applying the provisions of chapter 18.100 RCW to a professional limited liability company, the terms "director" or "officer" shall mean manager, "shareholder" shall mean member, "corporation" shall mean professional limited liability company, "articles of incorporation" shall mean certificate of formation, "shares" or "capital stock" shall mean a limited liability company interest, "incorporator" shall mean the person who executes the

certificate of formation, and "bylaws" shall mean the limited liability company agreement.

(4) The name of a professional limited liability company must contain either the words "Professional Limited Liability Company," or the words "Professional Limited Liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." provided that the name of a professional limited liability company organized to render dental services shall contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C."

(5) Subject to the provisions in article VII of this chapter, the following may be a member of a professional limited liability company and may be the transferee of the interest of an ineligible person or deceased member of the professional limited liability company:

(a) A professional corporation, if its shareholders, directors, and its officers other than the secretary and the treasurer, are licensed or otherwise legally authorized to render the same specific professional services as the professional limited liability company; and

(b) Another professional limited liability company, if the managers and members of both professional limited liability companies are licensed or otherwise legally authorized to render the same specific professional services.

Sec. 15. RCW 25.15.060 and 1994 c 211 s 112 are each amended to read as follows:

Members of a limited liability company shall be personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Washington business corporation would be liable in analogous circumstances. In this regard, the court may consider the factors and policies set forth in established case law with regard to piercing the corporate veil, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any act, debt, obligation, or liability of the limited liability company if the certificate of formation and limited liability company agreement do not expressly require the holding of meetings of members or managers.

Sec. 16. RCW 25.15.085 and 1994 c 211 s 204 are each amended to read as follows:

(1) Each document required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner:

(a) Each original certificate of formation must be signed by the person or persons forming the limited liability company;

(b) A reservation of name may be signed by any person;

(c) A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name;

(d) A registration of name must be signed by any member or manager of the foreign limited liability company;

(e) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;

(f) A certificate of cancellation must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to RCW 25.15.295(1);

(g) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; and

(h) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the state must be signed by any member or manager of the foreign limited liability company.

(2) Any person may sign a certificate, articles of merger, ~~((or))~~ limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signator signed.

(3) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(4) The execution of a certificate or articles of merger by any person constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

Sec. 17. RCW 25.15.130 and 1994 c 211 s 304 are each amended to read as follows:

(1) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member dies or withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;

(b) The member ceases to be a member as provided in RCW 25.15.250(2)(b) following an assignment of all the member's limited liability company interest;

(c) The member is removed as a member in accordance with the limited liability company agreement;

(d) Unless otherwise provided in the limited liability company agreement, or with the written consent of all other members at the time, the member (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief in

bankruptcy proceedings; (iv) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of the nature described in (d) (i) through (iv) of this subsection; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(e) Unless otherwise provided in the limited liability company agreement, or with the consent of all other members at the time, one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated;

(f) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member who is an individual, the entry of an order by a court of competent jurisdiction adjudicating the member (~~((incompetent to manage his or her person or estate))~~) incapacitated, as used and defined under chapter 11.88 RCW, as to his or her estate;

(g) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is another limited liability company, the dissolution and commencement of winding up of such limited liability company;

(h) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period authorized for application for reinstatement; or

(i) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a limited partnership, the dissolution and commencement of winding up of such limited partnership.

(2) The limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(3) (~~Unless otherwise provided in the limited liability company agreement,~~) A member may withdraw from a limited liability company at ((any time by giving thirty days' written notice to the other members)) the time or upon the happening of events specified in and in accordance with the limited liability

company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the time for the dissolution and commencement of winding up of the limited liability company, without the written consent of all other members at the time.

Sec. 18. RCW 25.15.220 and 1994 c 211 s 602 are each amended to read as follows:

Unless otherwise provided in the limited liability company agreement, upon the occurrence of an event of dissociation under RCW 25.15.130 which does not cause dissolution (other than an event of dissociation specified in RCW 25.15.130((2)) (1)(b) where the dissociating member's assignee is admitted as a member), a dissociating member (or the member's assignee) is entitled to receive any distribution to which ((the member (or assignee) is entitled under the limited liability company agreement and, if not otherwise provided in a limited liability company agreement, the member (or the member's assignee) is entitled to receive, within a reasonable time after dissociation, the fair value of the member's limited liability company interest as of the date of the dissociation based upon the member's right to share in distributions from the limited liability company)) an assignee would be entitled.

Sec. 19. RCW 25.15.250 and 1994 c 211 s 702 are each amended to read as follows:

(1) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except:

(a) Upon the approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(b) As provided in a limited liability company agreement.

(2) Unless otherwise provided in a limited liability company agreement:

(a) An assignment entitles the assignee to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(b) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.

(3) For the purposes of this chapter, unless otherwise provided in a limited liability company agreement:

(a) The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability company interest of a member shall not be deemed to be an assignment of the member's limited liability company interest, but a foreclosure or execution sale or exercise of similar rights with respect to all of a member's limited liability company interest

shall be deemed to be an assignment of the member's limited liability company interest to the transferee pursuant to such foreclosure or execution sale or exercise of similar rights;

(b) ~~((The death of a member who is an individual shall be deemed to be an assignment of that member's entire limited liability company interest to his or her personal representative;~~

~~(e))~~ Where a limited liability company interest is held in a trust or estate, or is held by a trustee, personal representative, or other fiduciary, the transfer of the limited liability company interest, whether to a beneficiary of the trust or estate or otherwise, shall be deemed to be an assignment of such limited liability company interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary shall not constitute an assignment of any portion of such limited liability company interest.

(4) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

Sec. 20. RCW 25.15.280 and 1994 c 211 s 803 are each amended to read as follows:

The secretary of state may commence a proceeding under RCW 25.15.285 to administratively dissolve a limited liability company if:

(1) The limited liability company does not pay any license fees or penalties, imposed by this chapter, when they become due;

(2) The limited liability company does not deliver its completed initial report or annual report to the secretary of state when it is due;

(3) The limited liability company is without a registered agent or registered office in this state for sixty days or more; or

~~((2))~~ (4) The limited liability company does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

Sec. 21. RCW 25.15.310 and 1994 c 211 s 901 are each amended to read as follows:

(1) Subject to the Constitution of the state of Washington:

(a) The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; and

(b) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

(2) A foreign limited liability company is subject to RCW 25.15.030 and, notwithstanding subsection (1)(a) of this section, a foreign limited liability

company rendering professional services in this state is also subject to RCW 25.15.045(2).

(3) A foreign limited liability company and its members and managers doing business in this state thereby submit to personal jurisdiction of the courts of this state and are subject to RCW 25.15.125.

Sec. 22. RCW 24.06.045 and 1994 c 211 s 1307 are each amended to read as follows:

The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Shall not be the same as, or deceptively similar to, the name of any corporation existing under any act of this state, or any foreign corporation authorized to transact business or conduct affairs in this state under any act of this state, or the name of any limited liability (~~corporation~~) company organized or authorized to transact business under any act of this state, the name of a domestic or foreign limited partnership on file with the secretary, or a corporate name reserved or registered as permitted by the laws of this state. This subsection shall not apply if the applicant files with the secretary of state either of the following: (a) The written consent of the other corporation, limited liability company, limited partnership, or holder of a reserved name to use the same or deceptively similar name and one or more words are added or deleted to make the name distinguishable from the other name as determined by the secretary of state, or (b) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

(3) Shall be transliterated into letters of the English alphabet if it is not in English.

(4) The name of any corporation formed under this section shall not include nor end with "incorporated", "company", or "corporation" or any abbreviation thereof, but may use "club", "league", "association", "services", "committee", "fund", "society", "foundation", "., a nonprofit mutual corporation", or any name of like import.

NEW SECTION. **Sec. 23.** 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, 1995.

Passed the Senate April 21, 1995.

Passed the House April 20, 1995.

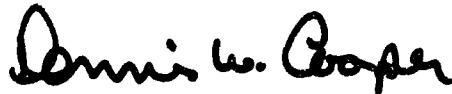
Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.

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 1995 regular session (54th Legislature), chapters 1 through 337, 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 11th day of July, 1995.

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

