

2000

SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTY-SIXTH LEGISLATURE
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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 \$21.60 per set (\$20.00 plus \$1.60 for state and local sales tax at 8.0%). The permanent edition costs \$54.00 per set (\$25.00 per volume plus \$4.00 for state and local sales tax at 8.0%). 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 2000 regular session to be June 8, 2000 (midnight June 7th).

(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 2000 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

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CHAPTER 1

[Initiative 695]

LICENSE TABS—TAX LIMITATIONS

AN ACT Relating to limiting taxation by: limiting excessive license tab fees; limiting tax increases by requiring voter approval; repealing existing licensing fees: RCW 46.16.060, 46.16.061, and 46.16.650; repealing existing excise taxes: 82.44.010, 82.44.015, 82.44.020, 82.44.022, 82.44.023, 82.44.025, 82.44.030, 82.44.041, 82.44.060, 82.44.065, 82.44.080, 82.44.090, 82.44.100, 82.44.110, 82.44.120, 82.44.130, 82.44.140, 82.44.150, 82.44.155, 82.44.157, 82.44.160, 82.44.170, 82.44.180, 82.44.900, 82.50.010, 82.50.060, 82.50.090, 82.50.170, 82.50.250, 82.50.400, 82.50.405, 82.50.410, 82.50.425, 82.50.435, 82.50.440, 82.50.460, 82.50.510, 82.50.520, 82.50.530, 82.50.540, and 82.50.901; adding a new section to chapter 46.16 RCW; adding a new section to chapter 43.135 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

- (1) License tab fees shall be \$30 per year for motor vehicles, regardless of year, value, make, or model, beginning January 1, 2000.
- (2) For the purposes of this section, "license tab fees" are defined as the general fees paid annually for licensing motor vehicles, including cars, sport utility vehicles, motorcycles, and motor homes.

NEW SECTION. Sec. 2. A new section is added to chapter 43.135 RCW to read as follows:

- (1) Any tax increase imposed by the state shall require voter approval.
- (2) For the purposes of this section, "tax" includes, but is not necessarily limited to, sales and use taxes, property taxes, business and occupation taxes, excise taxes, fuel taxes, impact fees, license fees, permit fees, and any monetary charge by government.
- (3) For the purposes of this section, "tax" does not include:
 - (a) Higher education tuition, and
 - (b) Civil and criminal fines and other charges collected in cases of restitution or violation of law or contract.
- (4) For the purposes of this section, "tax increase" includes, but is not necessarily limited to, a new tax, a monetary increase in an existing tax, a tax rate increase, an expansion in the legal definition of a tax base, and an extension of an expiring tax.
- (5) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself and all its departments and agencies, any city, county, special district, and other political subdivision or governmental instrumentality of or within the state.
- (6) This section does not apply to any specific emergency measure authorized by vote of two-thirds (2/3) of the members of each house of the legislature and expiring not later than twelve (12) months from the effective date of the emergency act.
- (7) This section is intended to add to, and not replace, the requirements for tax increases set forth in Initiative 601, the Taxpayer Protection Act, RCW 43.135.035.

NEW SECTION. **Sec. 3.** The following acts or parts of acts that impose taxes and fees on vehicles are each repealed:

- (1) RCW 46.16.060 and 1992 c 216 s 4, 1987 1st ex.s. c 9 s 3, 1985 c 380 s 13, 1981 c 342 s 8, 1975 1st ex.s. c 118 s 3, 1969 ex.s. c 170 s 3, 1969 c 99 s 5, 1965 c 25 s 1, 1961 ex.s. c 7 s 9, & 1961 c 12 s 46.16.060;
- (2) RCW 46.16.061 and 1985 c 380 s 14, 1984 c 7 s 49, & 1963 ex.s. c 3 s 40;
- (3) RCW 46.16.650 and 1997 c 291 s 12 & 1987 c 178 s 1;
- (4) RCW 82.44.010 and 1990 c 42 s 301, 1979 c 107 s 10, 1971 ex.s. c 299 s 54, 1967 c 121 s 4, 1963 c 199 s 1, & 1961 c 15 s 82.44.010;
- (5) RCW 82.44.015 and 1996 c 244 s 7, 1993 c 488 s 3, 1982 c 142 s 1, & 1980 c 166 s 3;
- (6) RCW 82.44.020 and 1998 c 321 s 3, 1993 sp.s. c 23 s 61, 1993 c 123 s 2, 1991 c 199 s 220, 1990 c 42 s 302, & 1988 c 191 s 1;
- (7) RCW 82.44.022 and 1998 c 321 s 2;
- (8) RCW 82.44.023 and 1998 c 321 s 38, 1998 c 145 s 1, 1994 c 227 s 3, & 1992 c 194 s 8;
- (9) RCW 82.44.025 and 1998 c 321 s 39, & 1996 c 139 s 3;
- (10) RCW 82.44.030 and 1971 ex.s. c 299 s 51 & 1961 c 15 s 82.44.030;
- (11) RCW 82.44.041 and 1998 c 321 s 4 & 1990 c 42 s 303;
- (12) RCW 82.44.060 and 1990 c 42 s 304, 1981 c 222 s 12, 1979 c 158 s 233, 1975-'76 2nd ex.s. c 54 s 2, 1975 1st ex.s. c 118 s 14, 1963 c 199 s 4, & 1961 c 15 s 82.44.060;
- (13) RCW 82.44.065 and 1990 c 42 s 305;
- (14) RCW 82.44.080 and 1961 c 15 s 82.44.080;
- (15) RCW 82.44.090 and 1961 c 15 s 82.44.090;
- (16) RCW 82.44.100 and 1961 c 15 s 82.44.100;
- (17) RCW 82.44.110 and 1998 c 321 s 5, 1997 c 338 s 68, & 1997 c 149 s 911;
- (18) RCW 82.44.120 and 1993 c 307 s 3, 1990 c 42 s 307, 1989 c 68 s 2, 1983 c 26 s 3, 1979 c 120 s 2, 1975 1st ex.s. c 278 s 95, 1974 ex.s. c 54 s 4, 1967 c 121 s 2, 1963 c 199 s 5, & 1961 c 15 s 82.44.120;
- (19) RCW 82.44.130 and 1961 c 15 s 82.44.130;
- (20) RCW 82.44.140 and 1979 c 158 s 237, 1967 c 121 s 3, & 1961 c 15 s 82.44.140;
- (21) RCW 82.44.150 and 1998 c 321 s 6, 1995 2nd sp.s. c 14 s 538, 1994 c 241 s 1, & 1993 c 491 s 2;
- (22) RCW 82.44.155 and 1998 c 321 s 40, 1993 c 492 s 254, 1991 c 199 s 223, & 1990 c 42 s 309;
- (23) RCW 82.44.157 and 1994 c 266 s 14;
- (24) RCW 82.44.160 and 1995 c 28 s 1;
- (25) RCW 82.44.170 and 1990 c 42 s 311, 1987 c 244 s 56, & 1985 c 380 s 22;
- (26) RCW 82.44.180 and 1998 c 321 s 41 & 1995 c 269 s 2601;

- (27) RCW 82.44.900 and 1961 c 15 s 82.44.900;
- (28) RCW 82.50.010 and 1989 c 337 s 20, 1979 c 107 s 11, 1977 ex.s. c 22 s 6, 1971 ex.s. c 299 s 35, 1967 ex.s. c 149 s 44, & 1961 c 15 s 82.50.010;
- (29) RCW 82.50.060 and 1961 c 15 s 82.50.060;
- (30) RCW 82.50.090 and 1961 c 15 s 82.50.090;
- (31) RCW 82.50.170 and 1992 c 154 s 6;
- (32) RCW 82.50.250 and 1967 ex.s. c 149 s 59;
- (33) RCW 82.50.400 and 1993 c 238 s 7, 1992 c 154 s 5, 1990 c 42 s 320, 1979 c 123 s 1, 1975 1st ex.s. c 118 s 15, & 1971 ex.s. c 299 s 55;
- (34) RCW 82.50.405 and 1991 c 199 s 226;
- (35) RCW 82.50.410 and 1998 c 321 s 23, 1991 c 199 s 225, 1990 c 42 s 321, 1979 c 123 s 2, 1975 1st ex.s. c 118 s 16, 1972 ex.s. c 144 s 2, & 1971 ex.s. c 299 s 56;
- (36) RCW 82.50.425 and 1990 c 42 s 323;
- (37) RCW 82.50.435 and 1990 c 42 s 324;
- (38) RCW 82.50.440 and 1979 c 158 s 242, 1975 1st ex.s. c 9 s 2, & 1971 ex.s. c 299 s 59;
- (39) RCW 82.50.460 and 1979 c 123 s 3, 1975 1st ex.s. c 118 s 17, & 1971 ex.s. c 299 s 61;
- (40) RCW 82.50.510 and 1998 c 321 s 24, 1991 c 199 s 227, 1990 c 42 s 322, 1975-'76 2nd ex.s. c 75 s 1, & 1971 ex.s. c 299 s 66;
- (41) RCW 82.50.520 and 1983 c 26 s 4, 1979 c 123 s 4, & 1971 ex.s. c 299 s 67;
- (42) RCW 82.50.530 and 1993 c 32 s 1, 1981 c 304 s 32, & 1971 ex.s. c 299 s 68;
- (43) RCW 82.50.540 and 1971 ex.s. c 299 s 69; and
- (44) RCW 82.50.901 and 1971 ex.s. c 299 s 53.

NEW SECTION. Sec. 4. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act.

NEW SECTION. Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 6. This act takes effect January 1, 2000.

Originally filed in Office of Secretary of State January 8, 1999.
Approved by the People of the State of Washington in the General Election on November 2, 1999.

CHAPTER 2

[Substitute House Bill 3077]

UNEMPLOYMENT INSURANCE

AN ACT Relating to unemployment insurance; amending RCW 50.04.355, 50.24.010, 50.29.020, 50.29.025, 50.29.026, 50.20.050, 50.20.060, and 50.20.080; reenacting and amending RCW 50.24.014; adding new sections to chapter 50.22 RCW; adding a new section to chapter 50.20 RCW; creating new sections; providing an expiration date; and declaring an emergency.

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

Sec. 1. RCW 50.04.355 and 1977 ex.s. c 33 s 2 are each amended to read as follows:

On or before the fifteenth day of June of each year, an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the specified preceding calendar years including corrections thereof reported within three months after the close of ~~((that))~~ the final year of the specified years by all employers as defined in RCW 50.04.080.

(1) The "average annual wage" is the quotient derived by dividing the total remuneration reported by all employers for the preceding calendar year by the average number of workers reported for all months of the preceding calendar year and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(2) The "average weekly wage" is the quotient derived by dividing the "average annual wage" ~~((thus))~~ obtained ~~((shall be divided))~~ under (1) of this subsection by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar ~~((to determine the "average weekly wage"))~~.

(3) The "average annual wage~~((=))~~ for contribution purposes" is the quotient derived by dividing by three the total remuneration reported by all employers subject to contributions for the preceding three consecutive calendar years and dividing this amount by the average number of workers reported for all months of these three years by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

Sec. 2. RCW 50.24.010 and 1984 c 205 s 2 are each amended to read as follows:

Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which the employer is subject to this title at the rate established pursuant to chapter 50.29 RCW.

In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars~~((= PROVIDED))~~, except that the amount of wages subject to tax in any rate year shall not exceed eighty percent of the "average annual wage for contributions purposes" for the

second preceding calendar year rounded to the next lower one hundred dollars(~~(: PROVIDED FURTHER, That)~~). However, the amount subject to tax shall be ~~((twelve))~~ twenty-four thousand three hundred dollars for rate year ~~((1984 and ten thousand dollars for rate year 1985))~~ 2000.

In making computations under this section and RCW 50.29.010, wages paid based on services for employers making payments in lieu of contributions shall not be considered remuneration. Moneys paid from the fund, based on services performed for employers who make payments in lieu of contributions, which have not been reimbursed to the fund as of any June 30 shall be deemed an asset of the unemployment compensation fund, to the extent that such moneys exceed the amount of payments in lieu of contributions which the commissioner has previously determined to be uncollectible: **PROVIDED, FURTHER**, That the amount attributable to employment with the state shall also include interest as provided for in RCW 50.44.020.

Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in employment of the employer. Any deduction in violation of the provisions of this section shall be unlawful.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

Sec. 3. RCW 50.29.020 and 1995 c 57 s 3 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 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) Benefits paid which represent the state's share of benefits payable as extended benefits defined under ~~((chapter 50.22))~~ RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(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.

(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.

(f) Benefits paid under section 8 of this act shall not be charged to the experience rating account of any contribution paying employer.

(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.

Sec. 4. RCW 50.29.025 and 1995 c 4 s 2 are each amended to read as follows:

The contribution rate for each employer subject to contributions under RCW 50.24.010 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))~~ September 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
2.90 and above	AA
((2.50)) <u>2.10</u> to 2.89	A
((2.10 to 2.49)) <u>1.70 to 2.09</u>	B
((1.70 to 2.09)) <u>1.40 to 1.69</u>	C
((1.30 to 1.69)) <u>1.00 to 1.39</u>	D
((1.00 to 1.29)) <u>0.70 to 0.99</u>	E
Less than ((1.00)) <u>0.70</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) Except as provided in RCW 50.29.026, 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							
(Rate Class)			AA	A	B	C	D	E	F	
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	

Rate			AA	A	B	C	D	E	F
From	To	Class	AA	A	B	C	D	E	F
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87
15.01	20.00	4	0.57	0.77	1.11	1.51	1.90	2.40	2.98
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63
75.01	80.00	16	2.87	3.09	3.69	3.81	4.22	4.53	4.73
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37
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)) a contribution rate ((of five and six-tenths percent)) two-tenths higher than that in rate class 20 for the applicable rate year, 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))~~ a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

~~(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~~

~~—(e))~~ 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))~~ section, 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, or in the North American industry classification system code.

Sec. 5. RCW 50.29.026 and 1995 c 322 s 1 are each amended 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 inodified 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 or, for voluntary contributions for rate year 2000, ending on March 31, 2000.

(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. 6. A new section is added to chapter 50.22 RCW to read as follows:

It is the intent of the legislature that a training benefits program be established to provide unemployment insurance benefits to unemployed individuals who participate in training programs necessary for their reemployment.

The legislature further intends that this program serve the following goals:

- (1) Retraining should be available for those unemployed individuals whose skills are no longer in demand;
- (2) To be eligible for retraining, an individual must have a long-term attachment to the labor force;
- (3) Training must enhance the individual's marketable skills and earning power; and
- (4) Retraining must be targeted to those industries or skills that are in high demand within the labor market.

Individuals unemployed as a result of structural changes in the economy and technological advances rendering their skills obsolete must receive the highest priority for participation in this program. It is the further intent of the legislature that individuals for whom suitable employment is available are not eligible for additional benefits while participating in training.

The legislature further intends that funding for this program be limited by a specified maximum amount each fiscal year.

NEW SECTION. Sec. 7. A new section is added to chapter 50.22 RCW to read as follows:

The employment security department is authorized to pay training benefits under section 8 of this act, but may not obligate expenditures beyond the limits specified in this section or as otherwise set by the legislature. Beginning with expenditures for the fiscal year ending June 30, 2000, and including expenditures for the fiscal biennium ending June 30, 2002, the commissioner may not obligate more than sixty million dollars for training benefits. Any funds not obligated in one fiscal year may be carried forward to the next fiscal year. For each fiscal year beginning after June 30, 2002, the commissioner may not obligate more than twenty million dollars annually in addition to any funds carried over from previous fiscal years. The department shall develop a process to ensure that expenditures do not exceed available funds and to prioritize access to funds when again available.

NEW SECTION. Sec. 8. A new section is added to chapter 50.22 RCW to read as follows:

(1) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits and who:

(a) Is a dislocated worker as defined in RCW 50.04.075;

(b) Except as provided under subsection (2) of this section, has demonstrated, through a work history, sufficient tenure in an occupation or in work with a particular skill set. This screening will take place during the assessment process;

(c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (9) of this section;

(d) Develops an individual training program that is submitted to the commissioner for approval within sixty days after the individual is notified by the employment security department of the requirements of this section;

(e) Enters the approved training program by ninety days after the date of the notification, unless the employment security department determines that the training is not available during the ninety-day period, in which case the individual enters training as soon as it is available; and

(f) Is enrolled in training approved under this section on a full-time basis as determined by the educational institution, and is making satisfactory progress in the training as certified by the educational institution.

(2) Until June 30, 2002, the following individuals who meet the requirements of subsection (1) of this section may, without regard to the tenure requirements under subsection (1)(b) of this section, receive training benefits as provided in this section:

(a) An exhaustee who has base year employment in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411";

(b) An exhaustee who has base year employment in the forest products industry, determined by the department, but including the industries assigned the major group standard industrial classification codes "24" and "26" or any equivalent codes in the North American industry classification system code, 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

(c) An exhaustee who has base year employment in the fishing industry assigned the standard industrial classification code "0912" or any equivalent codes in the North American industry classification system code.

(3) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer;
(b) Has a definite recall date that is within six months of the date he or she is laid off; or

(c) Is unemployed due to a regular seasonal layoff which demonstrates a pattern of unemployment consistent with the provisions of RCW 50.20.015. Regular seasonal layoff does not include layoff due to permanent structural downsizing or structural changes in the individual's labor market.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "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, including equivalent educational institutions in other states.

(b) "Sufficient tenure" means earning a plurality of wages in a particular occupation or using a particular skill set during the base year and at least two of the four twelve-month periods immediately preceding the base year.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution:

(A) That is targeted to training for a high demand occupation. Beginning July 1, 2001, the assessment of high demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (9) of this section;

(B) That is likely to enhance the individual's marketable skills and earning power; and

(C) That meets the criteria for performance developed by the work force training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(5) Benefits shall be paid as follows:

(a)(i) For exhaustees who are eligible under subsection (1) of this section, the total training benefit amount shall be fifty-two 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; or

(ii) For exhaustees who are eligible under subsection (2) of this section, the total training benefit amount shall be seventy-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. Beginning with new claims filed after June 30, 2002, for exhaustees eligible under subsection (2) of this section, the total training benefit amount shall be fifty-two 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.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits. The training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(c) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(6) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(7) Individuals who receive training benefits under this section or under any previous additional benefits program for training are not eligible for training benefits under this section for five years from the last receipt of training benefits under this section or under any previous additional benefits program for training.

(8) All base year employers are interested parties to the approval of training and the granting of training benefits.

(9) By July 1, 2001, each local work force development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and occupations and skill sets that are in high demand. For the purposes of sections 6 through 9 of this act, "high demand" means demand for employment that exceeds the supply of qualified workers for occupations or skill sets in a labor market area. Local work force development councils must use state and locally developed labor market information. Thereafter, each local work force development council shall update this information annually or more frequently if needed.

(10) The commissioner shall adopt rules as necessary to implement this section.

NEW SECTION. **Sec. 9.** (1) The work force training and education coordinating board, with the cooperation and assistance of the state board for

community and technical colleges and the employment security department, shall review the participation in the training benefits program under section 8 of this act and report to the appropriate committees of the legislature by December 1, 2002, on the following:

(a) A demographic analysis of participants in the training benefits program under this section including the number of claimants per standard industrial classification code and the gender, race, age, and geographic representation of participants;

(b) The duration of training benefits claimed per claimant;

(c) An analysis of the training provided to participants including the occupational category supported by the training, those participants who complete training in relationship to those that do not, and the reasons for noncompletion of approved training programs;

(d) The employment and wage history of participants, including the pretraining and posttraining wage and whether those participating in training return to their previous employer after training terminates;

(e) The impact of training benefits paid from the unemployment compensation fund on employers' unemployment insurance contributions. The review shall include the impact by rate class, industry and business size, and overall impact; and

(f) An identification and analysis of administrative costs at both the local and state level for implementing this program.

(2) The employment security department shall collect the following information:

(a) The number of applicants disqualified for unemployment benefits under Title 50 RCW by disqualifying reason;

(b) The benefits costs resulting from claims in which the claimant requalifies under sections 12 through 14 of this act and the extent to which these costs are socialized;

(c) An analysis of the disqualification and requalification for benefits and the impact on claimants and employers; and

(d) An analysis of RCW 50.20.050(2)(c), including demographics of affected claimants and employers.

(3) Any demographic information collected under this section will be aggregated to ensure that the confidentiality provisions of chapter 50.13 RCW extend to claimants and employers who are the subject of this study.

NEW SECTION, Sec. 10. A new section is added to chapter 50.20 RCW to read as follows:

(1) To ensure that unemployment insurance benefits are paid in accordance with RCW 50.20.098, the employment security department shall verify that an individual is eligible to work in the United States before the individual receives training benefits under section 8 of this act.

(2) By July 1, 2002, the employment security department shall:

(a) Develop and implement an effective method for determining, where appropriate, eligibility to work in the United States for individuals applying for unemployment benefits under this title;

(b) Review verification systems developed by federal agencies for verifying a person's eligibility to receive unemployment benefits under this title and evaluate the effectiveness of these systems for use in this state; and

(c) Report its initial findings to the legislature by September 1, 2000, and its final report by July 1, 2002.

(3) Where federal law prohibits the conditioning of unemployment benefits on a verification of an individual's status as a qualified or authorized alien, the requirements of this section shall not apply.

NEW SECTION. Sec. 11. (1) A legislative task force is established to review and make recommendations regarding the changes deemed necessary to ensure that the unemployment insurance system meets the needs of employers and workers in the twenty-first century. The task force shall consist of fifteen members, as follows:

(a) Two members from each of the two largest caucuses of the senate, appointed by the president of the senate;

(b) Two members from each of the two largest caucuses of the house of representatives, appointed by the co-speakers of the house of representatives;

(c) Three members representing business, appointed jointly by the president of the senate and the co-speakers of the house of representatives from nominees provided by state-wide business organizations representing a cross-section of industries and small business;

(d) Three members representing labor, appointed jointly by the president of the senate and the co-speakers of the house of representatives from nominees provided by state-wide labor organizations; and

(e) A representative of the executive branch, appointed by the governor. The task force shall choose its chair from among its membership.

(2) The task force shall review the historical fundamentals of the unemployment insurance system established early in the twentieth century and determine to what extent, if any, the system should be modified to meet the challenges of maintaining low unemployment, establishing a skilled work force, and ensuring a strong and competitive business and employment climate in our new technology-based twenty-first century economy.

(3) The task force shall use legislative facilities and staff from senate committee services and the office of program research, but may hire additional staff with specific technical expertise if such expertise is necessary to carry out the mandates of this study. Each nonlegislative member of the task force shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. All expenses of the task force, including travel, shall be paid jointly by the senate and the house of representatives.

(4) The task force shall report its findings and recommendations to the legislature by December 1, 2000.

(5) This section expires July 1, 2001.

Sec. 12. RCW 50.20.050 and 1993 c 483 s 8 are each amended to read as follows:

(1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for ~~((five))~~ seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to ~~((five))~~ seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(a) The duration of the work;
(b) The extent of direction and control by the employer over the work; and
(c) The level of skill required for the work in light of the individual's training and experience.

(2) An individual shall not be considered to have left work voluntarily without good cause when:

(a) He or she has left work to accept a bona fide offer of bona fide work as described in subsection (1) of this section;

(b) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: **PROVIDED**, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; or

(c) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move.

(3) In determining under this section whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the

individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(4) Subsections (1) and (3) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for ~~((five))~~ seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to ~~((five))~~ seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by subsection (2)(b) or (c) of this section.

Sec. 13. RCW 50.20.060 and 1993 c 483 s 9 are each amended to read as follows:

An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for ~~((five))~~ seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to ~~((five))~~ seven times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct.

Sec. 14. RCW 50.20.080 and 1993 c 483 s 10 are each amended to read as follows:

An individual is disqualified for benefits, if the commissioner finds that the individual has failed without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner, or to accept suitable work when offered the individual, or to return to his or her customary self-employment (if any) when so directed by the commissioner. Such disqualification shall begin with the week of the refusal and thereafter for ~~((five))~~ seven calendar weeks and continue until the individual has obtained bona fide work in employment covered by this title and earned wages ~~((therefor))~~ in that employment of not less than ~~((five))~~ seven times his or her suspended weekly benefit amount.

Sec. 15. RCW 50.24.014 and 1998 c 346 s 901 and 1998 c 161 s 7 are each reenacted and amended to read as follows:

(1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. Contributions to this account shall accrue and become payable by 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, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative cost under section 8 of this act and the costs under section 8(9) of this act. Contributions to this account shall accrue and become payable by 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, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(6)(b), and those qualified employers assigned rate class 20 under RCW 50.29.025, at a basic rate of one one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the unemployment compensation trust fund.

(c) For the first calendar quarter of 1994 only, the basic two one-hundredths of one percent contribution payable under (a) of this subsection shall be increased by one-hundredth of one percent to a total rate of three one-hundredths of one percent. The proceeds of this incremental one-hundredth of one percent shall be used solely for the purposes described in section 22, chapter 483, Laws of 1993, and for the purposes of conducting an evaluation of the call center approach to unemployment insurance under section 5, chapter 161, Laws of 1998. During the 1997-1999 fiscal biennium, any surplus from contributions payable under this subsection ~~((b))~~ (c) may be deposited in the unemployment compensation trust fund, used to support tax and wage automated systems projects that simplify and streamline employer reporting, or both.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st.

NEW SECTION. **Sec. 16.** (1) Sections 1, 2, 4, 5, and 15 of this act apply to rate years beginning on or after January 1, 2000.

(2)(a) Except as provided under (b) of this subsection, sections 8 and 12 through 14 of this act apply beginning with weeks of unemployment that begin on or after the Sunday following the day on which the governor signs chapter . . . , Laws of 2000 (this act).

(b) For individuals eligible under section 8(2)(a) of this act who are enrolled in a national reserve grant on the effective date of this act, section 8 of this act applies beginning with weeks of unemployment that begin after the termination of their needs-related payments under a national reserve grant.

NEW SECTION. **Sec. 17.** 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 inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must 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. 18.** 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. 19.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House January 28, 2000.

Passed the Senate February 1, 2000.

Approved by the Governor February 7, 2000.

Filed in Office of Secretary of State February 7, 2000.

CHAPTER 3

[Engrossed Substitute House Bill 2337]

JAIL BOOKING AND REPORTING

AN ACT Relating to a state-wide jail booking and reporting system; adding new sections to chapter 36.28A RCW; and creating new sections.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 36.28A RCW to read as follows:

(1) No later than December 31, 2001, the Washington association of sheriffs and police chiefs shall implement and operate an electronic state-wide city and county jail hooking and reporting system. The system shall serve as a central repository and instant information source for offender information and jail statistical data. The system shall be placed on the Washington state justice information network and be capable of communicating electronically with every Washington state city and county jail and with all other Washington state criminal justice agencies as defined in RCW 10.97.030.

(2) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, if a city or county jail or law enforcement agency receives state or federal funding to cover the entire cost of implementing or reconfiguring an electronic jail booking system, the city or county jail or law enforcement agency shall implement or reconfigure an electronic jail booking system that is in compliance with the jail booking system standards developed pursuant to subsection (4) of this section.

(3) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, city or county jails, or law enforcement agencies that operate electronic jail booking systems, but choose not to accept state or federal money to implement or reconfigure electronic jail booking systems, shall electronically forward jail booking information to the Washington association of sheriffs and police chiefs. At a minimum the information forwarded shall include the name of the offender, vital statistics, the date the offender was arrested, the offenses arrested for, and if available, the mug shot. The electronic format in which the information is sent shall be at the discretion of the city or county jail, or law enforcement agency forwarding the information. City and county jails or law enforcement agencies that forward jail booking information under this subsection are not required to comply with the standards developed under subsection (4)(b) of this section.

(4) The Washington association of sheriffs and police chiefs shall appoint, convene, and manage a state-wide jail booking and reporting system standards committee. The committee shall include representatives from the Washington association of sheriffs and police chiefs correction committee, the information service board's justice information committee, the judicial information system, at least two individuals who serve as jailers in a city or county jail, and other individuals that the Washington association of sheriffs and police chiefs places on the committee. The committee shall have the authority to:

(a) Develop and amend as needed standards for the state-wide jail booking and reporting system and for the information that must be contained within the system. At a minimum, the system shall contain:

(i) The offenses the individual has been charged with;

(ii) Descriptive and personal information about each offender booked into a city or county jail. At a minimum, this information shall contain the offender's name, vital statistics, address, and mugshot;

(iii) Information about the offender while in jail, which could be used to protect criminal justice officials that have future contact with the offender, such as medical conditions, acts of violence, and other behavior problems;

(iv) Statistical data indicating the current capacity of each jail and the quantity and category of offenses charged; and

(v) The ability to communicate directly and immediately with the city and county jails and other criminal justice entities;

(b) Develop and amend as needed operational standards for city and county jail booking systems, which at a minimum shall include the type of information collected and transmitted, and the technical requirements needed for the city and county jail booking system to communicate with the state-wide jail booking and reporting system;

(c) Develop and amend as needed standards for allocating grants to city and county jails or law enforcement agencies that will be implementing or reconfiguring electronic jail booking systems.

(5) By January 1, 2001, the standards committee shall complete the initial standards described in subsection (4) of this section, and the standards shall be placed into a report and provided to all Washington state city and county jails, all other criminal justice agencies as defined in RCW 10.97.030, the chair of the Washington state senate human services and corrections committee, and the chair of the Washington state house of representatives criminal justice and corrections committee.

NEW SECTION. Sec. 2. A new section is added to chapter 36.28A RCW to read as follows:

(1) The Washington association of sheriffs and police chiefs shall establish and manage a local jail booking system grant fund. All federal or state money collected to offset the costs associated with section 1(2) of this act shall be processed through the grant fund established by this section. The state-wide jail booking and reporting system standards committee established under section 1(4) of this act shall distribute the grants in accordance with any standards it develops.

(2) The Washington association of sheriffs and police chiefs shall pursue federal funding to be placed into the local jail booking system grant fund.

NEW SECTION. Sec. 3. The Washington association of sheriffs and police chiefs shall pursue federal funding to pay for the costs of implementing the central site of the state-wide jail booking and reporting system.

NEW SECTION. Sec. 4. If the Washington association of sheriffs and police chiefs does not receive federal funding for purposes of this act by December 31, 2000, this act is null and void.

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Passed the House January 26, 2000.
Passed the Senate February 9, 2000.
Approved by the Governor February 18, 2000.
Filed in Office of Secretary of State February 18, 2000.

CHAPTER 4

[House Bill 2926]

COAL TAX EXEMPTIONS—REPEALED

AN ACT Relating to coal tax exemptions; and repealing RCW 82.08.812 and 82.12.812.

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 82.08.812 (Exemptions—Coal used at coal-fired thermal electric generation facility—Forfeiture upon use of nonlocal coal sources—Reinstatement) and 1997 c 368 s 5; and

(2) RCW 82.12.812 (Exemptions—Coal used at coal-fired thermal electric generation facility—Forfeiture upon use of nonlocal coal sources—Reinstatement) and 1997 c 368 s 7.

Passed the House February 10, 2000.
Passed the Senate February 29, 2000.
Approved by the Governor March 8, 2000.
Filed in Office of Secretary of State March 8, 2000.

CHAPTER 5

[Second Substitute Senate Bill 6199]

HEALTH CARE PATIENT BILL OF RIGHTS

AN ACT Relating to health care patient protection; amending RCW 70.02.110, 70.02.900, 51.04.020, 74.09.050, and 70.47.130; adding new sections to chapter 48.43 RCW; adding a new section to chapter 70.02 RCW; adding a new section to chapter 43.70 RCW; adding new sections to chapter 41.05 RCW; creating new sections; repealing RCW 48.43.075 and 48.43.095; and providing effective dates.

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

NEW SECTION. Sec. 1. PATIENT RIGHTS. It is the intent of the legislature that enrollees covered by health plans receive quality health care designed to maintain and improve their health. The purpose of this act is to ensure that health plan enrollees:

- (1) Have improved access to information regarding their health plans;
- (2) Have sufficient and timely access to appropriate health care services, and choice among health care providers;
- (3) Are assured that health care decisions are made by appropriate medical personnel;
- (4) Have access to a quick and impartial process for appealing plan decisions;

- (5) Are protected from unnecessary invasions of health care privacy; and
- (6) Are assured that personal health care information will be used only as necessary to obtain and pay for health care or to improve the quality of care.

NEW SECTION. Sec. 2. A new section is added to chapter 70.02 RCW to read as follows:

HEALTH INFORMATION PRIVACY. Third-party payors shall not release health care information disclosed under this chapter, except to the extent that health care providers are authorized to do so under RCW 70.02.050.

Sec. 3. RCW 70.02.110 and 1991 c 335 s 402 are each amended to read as follows:

HEALTH INFORMATION PRIVACY. (1) In making a correction or amendment, the health care provider shall:

- (a) Add the amending information as a part of the health record; and
- (b) Mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

- (a) Permit the patient to file as a part of the record of the patient's health care information a concise statement of the correction or amendment requested and the reasons therefor; and
- (b) Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

(3) A health care provider who receives a request from a patient to amend or correct the patient's health care information, as provided in RCW 70.02.100, shall forward any changes made in the patient's health care information or health record, including any statement of disagreement, to any third-party payor or insurer to which the health care provider has disclosed the health care information that is the subject of the request.

Sec. 4. RCW 70.02.900 and 1991 c 335 s 901 are each amended to read as follows:

HEALTH INFORMATION PRIVACY. (1) This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, 70.39, 70.96A, 71.05, and 71.34 RCW and rules adopted under these provisions.

NEW SECTION. Sec. 5. HEALTH INFORMATION PRIVACY. (1) Health carriers and insurers shall adopt policies and procedures that conform

administrative, business, and operational practices to protect an enrollee's right to privacy or right to confidential health care services granted under state or federal laws.

(2) The commissioner may adopt rules to implement this section after considering relevant standards adopted by national managed care accreditation organizations and the national association of insurance commissioners, and after considering the effect of those standards on the ability of carriers to undertake enrollee care management and disease management programs.

NEW SECTION. Sec. 6. INFORMATION DISCLOSURE. (1) A carrier that offers a health plan may not offer to sell a health plan to an enrollee or to any group representative, agent, employer, or enrollee representative without first offering to provide, and providing upon request, the following information before purchase or selection:

(a) A listing of covered benefits, including prescription drug benefits, if any, a copy of the current formulary, if any is used, definitions of terms such as generic versus brand name, and policies regarding coverage of drugs, such as how they become approved or taken off the formulary, and how consumers may be involved in decisions about benefits;

(b) A listing of exclusions, reductions, and limitations to covered benefits, and any definition of medical necessity or other coverage criteria upon which they may be based;

(c) A statement of the carrier's policies for protecting the confidentiality of health information;

(d) A statement of the cost of premiums and any enrollee cost-sharing requirements;

(e) A summary explanation of the carrier's grievance process;

(f) A statement regarding the availability of a point-of-service option, if any, and how the option operates; and

(g) A convenient means of obtaining lists of participating primary care and specialty care providers, including disclosure of network arrangements that restrict access to providers within any plan network. The offer to provide the information referenced in this subsection (1) must be clearly and prominently displayed on any information provided to any prospective enrollee or to any prospective group representative, agent, employer, or enrollee representative.

(2) Upon the request of any person, including a current enrollee, prospective enrollee, or the insurance commissioner, a carrier must provide written information regarding any health care plan it offers, that includes the following written information:

(a) Any documents, instruments, or other information referred to in the medical coverage agreement;

(b) A full description of the procedures to be followed by an enrollee for consulting a provider other than the primary care provider and whether the

enrollee's primary care provider, the carrier's medical director, or another entity must authorize the referral;

(c) Procedures, if any, that an enrollee must first follow for obtaining prior authorization for health care services;

(d) A written description of any reimbursement or payment arrangements, including, but not limited to, capitation provisions, fee-for-service provisions, and health care delivery efficiency provisions, between a carrier and a provider or network;

(e) Descriptions and justifications for provider compensation programs, including any incentives or penalties that are intended to encourage providers to withhold services or minimize or avoid referrals to specialists;

(f) An annual accounting of all payments made by the carrier which have been counted against any payment limitations, visit limitations, or other overall limitations on a person's coverage under a plan;

(g) A copy of the carrier's grievance process for claim or service denial and for dissatisfaction with care; and

(h) Accreditation status with one or more national managed care accreditation organizations, and whether the carrier tracks its health care effectiveness performance using the health employer data information set (HEDIS), whether it publicly reports its HEDIS data, and how interested persons can access its HEDIS data.

(3) Each carrier shall provide to all enrollees and prospective enrollees a list of available disclosure items.

(4) Nothing in this section requires a carrier or a health care provider to divulge proprietary information to an enrollee, including the specific contractual terms and conditions between a carrier and a provider.

(5) No carrier may advertise or market any health plan to the public as a plan that covers services that help prevent illness or promote the health of enrollees unless it:

(a) Provides all clinical preventive health services provided by the basic health plan, authorized by chapter 70.47 RCW;

(b) Monitors and reports annually to enrollees on standardized measures of health care and satisfaction of all enrollees in the health plan. The state department of health shall recommend appropriate standardized measures for this purpose, after consideration of national standardized measurement systems adopted by national managed care accreditation organizations and state agencies that purchase managed health care services; and

(c) Makes available upon request to enrollees its integrated plan to identify and manage the most prevalent diseases within its enrolled population, including cancer, heart disease, and stroke.

(6) No carrier may preclude or discourage its providers from informing an enrollee of the care he or she requires, including various treatment options, and whether in the providers' view such care is consistent with the plan's health

coverage criteria, or otherwise covered by the enrollee's medical coverage agreement with the carrier. No carrier may prohibit, discourage, or penalize a provider otherwise practicing in compliance with the law from advocating on behalf of an enrollee with a carrier. Nothing in this section shall be construed to authorize a provider to bind a carrier to pay for any service.

(7) No carrier may preclude or discourage enrollees or those paying for their coverage from discussing the comparative merits of different carriers with their providers. This prohibition specifically includes prohibiting or limiting providers participating in those discussions even if critical of a carrier.

(8) Each carrier must communicate enrollee information required in this act by means that ensure that a substantial portion of the enrollee population can make use of the information.

(9) The commissioner may adopt rules to implement this section. In developing rules to implement this section, the commissioner shall consider relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services.

NEW SECTION. Sec. 7. ACCESS TO APPROPRIATE HEALTH SERVICES. (1) Each enrollee in a health plan must have adequate choice among health care providers.

(2) Each carrier must allow an enrollee to choose a primary care provider who is accepting new enrollees from a list of participating providers. Enrollees also must be permitted to change primary care providers at any time with the change becoming effective no later than the beginning of the month following the enrollee's request for the change.

(3) Each carrier must have a process whereby an enrollee with a complex or serious medical or psychiatric condition may receive a standing referral to a participating specialist for an extended period of time.

(4) Each carrier must provide for appropriate and timely referral of enrollees to a choice of specialists within the plan if specialty care is warranted. If the type of medical specialist needed for a specific condition is not represented on the specialty panel, enrollees must have access to nonparticipating specialty health care providers.

(5) Each carrier shall provide enrollees with direct access to the participating chiropractor of the enrollee's choice for covered chiropractic health care without the necessity of prior referral. Nothing in this subsection shall prevent carriers from restricting enrollees to seeing only providers who have signed participating provider agreements or from utilizing other managed care and cost containment techniques and processes. For purposes of this subsection, "covered chiropractic health care" means covered benefits and limitations related to chiropractic health services as stated in the plan's medical coverage agreement, with the exception of any provisions related to prior referral for services.

(6) Each carrier must provide, upon the request of an enrollee, access by the enrollee to a second opinion regarding any medical diagnosis or treatment plan from a qualified participating provider of the enrollee's choice.

(7) Each carrier must cover services of a primary care provider whose contract with the plan or whose contract with a subcontractor is being terminated by the plan or subcontractor without cause under the terms of that contract for at least sixty days following notice of termination to the enrollees or, in group coverage arrangements involving periods of open enrollment, only until the end of the next open enrollment period. The provider's relationship with the carrier or subcontractor must be continued on the same terms and conditions as those of the contract the plan or subcontractor is terminating, except for any provision requiring that the carrier assign new enrollees to the terminated provider.

(8) Every carrier shall meet the standards set forth in this section and any rules adopted by the commissioner to implement this section. In developing rules to implement this section, the commissioner shall consider relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services.

NEW SECTION. Sec. 8. HEALTH CARE DECISIONS. (1) Carriers that offer a health plan shall maintain a documented utilization review program description and written utilization review criteria based on reasonable medical evidence. The program must include a method for reviewing and updating criteria. Carriers shall make clinical protocols, medical management standards, and other review criteria available upon request to participating providers.

(2) The commissioner shall adopt, in rule, standards for this section after considering relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services.

(3) A carrier shall not be required to use medical evidence or standards in its utilization review of religious nonmedical treatment or religious nonmedical nursing care.

NEW SECTION. Sec. 9. RETROSPECTIVE DENIAL OF SERVICES. (1) A health carrier that offers a health plan shall not retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan's written policies at the time the care was rendered.

(2) The commissioner shall adopt, in rule, standards for this section after considering relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services.

NEW SECTION. Sec. 10. GRIEVANCE PROCESS. (1) Each carrier that offers a health plan must have a fully operational, comprehensive grievance process that complies with the requirements of this section and any rules adopted by the commissioner to implement this section. For the purposes of this section, the commissioner shall consider grievance process standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services.

(2) Each carrier must process as a complaint an enrollee's expression of dissatisfaction about customer service or the quality or availability of a health service. Each carrier must implement procedures for registering and responding to oral and written complaints in a timely and thorough manner.

(3) Each carrier must provide written notice to an enrollee or the enrollee's designated representative, and the enrollee's provider, of its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to or continued stay in a health care facility.

(4) Each carrier must process as an appeal an enrollee's written or oral request that the carrier reconsider: (a) Its resolution of a complaint made by an enrollee; or (b) its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to, or continued stay in, a health care facility. A carrier must not require that an enrollee file a complaint prior to seeking appeal of a decision under (b) of this subsection.

(5) To process an appeal, each carrier must:

(a) Provide written notice to the enrollee when the appeal is received;

(b) Assist the enrollee with the appeal process;

(c) Make its decision regarding the appeal within thirty days of the date the appeal is received. An appeal must be expedited if the enrollee's provider or the carrier's medical director reasonably determines that following the appeal process response timelines could seriously jeopardize the enrollee's life, health, or ability to regain maximum function. The decision regarding an expedited appeal must be made within seventy-two hours of the date the appeal is received;

(d) Cooperate with a representative authorized in writing by the enrollee;

(e) Consider information submitted by the enrollee;

(f) Investigate and resolve the appeal; and

(g) Provide written notice of its resolution of the appeal to the enrollee and, with the permission of the enrollee, to the enrollee's providers. The written notice must explain the carrier's decision and the supporting coverage or clinical reasons and the enrollee's right to request independent review of the carrier's decision under section 11 of this act.

(6) Written notice required by subsection (3) of this section must explain:

(a) The carrier's decision and the supporting coverage or clinical reasons; and

(b) The carrier's appeal process, including information, as appropriate, about how to exercise the enrollee's rights to obtain a second opinion, and how to continue receiving services as provided in this section.

(7) When an enrollee requests that the carrier reconsider its decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving through the health plan and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide that health service

until the appeal is resolved. If the resolution of the appeal or any review sought by the enrollee under section 11 of this act affirms the carrier's decision, the enrollee may be responsible for the cost of this continued health service.

(8) Each carrier must provide a clear explanation of the grievance process upon request, upon enrollment to new enrollees, and annually to enrollees and subcontractors.

(9) Each carrier must ensure that the grievance process is accessible to enrollees who are limited English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file a grievance.

(10) Each carrier must: Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a log of all appeals; and identify and evaluate trends in appeals.

NEW SECTION. Sec. 11. INDEPENDENT REVIEW OF HEALTH CARE DISPUTES. (1) There is a need for a process for the fair consideration of disputes relating to decisions by carriers that offer a health plan to deny, modify, reduce, or terminate coverage of or payment for health care services for an enrollee.

(2) An enrollee may seek review by a certified independent review organization of a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for a health care service, after exhausting the carrier's grievance process and receiving a decision that is unfavorable to the enrollee, or after the carrier has exceeded the timelines for grievances provided in section 10 of this act, without good cause and without reaching a decision.

(3) The commissioner must establish and use a rotational registry system for the assignment of a certified independent review organization to each dispute. The system should be flexible enough to ensure that an independent review organization has the expertise necessary to review the particular medical condition or service at issue in the dispute.

(4) Carriers must provide to the appropriate certified independent review organization, not later than the third business day after the date the carrier receives a request for review, a copy of:

- (a) Any medical records of the enrollee that are relevant to the review;
- (b) Any documents used by the carrier in making the determination to be reviewed by the certified independent review organization;
- (c) Any documentation and written information submitted to the carrier in support of the appeal; and
- (d) A list of each physician or health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal. Health information or other confidential or proprietary information in the custody of a carrier may be provided to an independent review organization, subject to rules adopted by the commissioner.

(5) The medical reviewers from a certified independent review organization will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for

an enrollee. The medical reviewers' determinations must be based upon their expert medical judgment, after consideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in the state of Washington. Except as provided in this subsection, the certified independent review organization must ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement. Medical reviewers may override the health plan's medical necessity or appropriateness standards if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice.

(6) Once a request for an independent review determination has been made, the independent review organization must proceed to a final determination, unless requested otherwise by both the carrier and the enrollee or the enrollee's representative.

(7) Carriers must timely implement the certified independent review organization's determination, and must pay the certified independent review organization's charges.

(8) When an enrollee requests independent review of a dispute under this section, and the dispute involves a carrier's decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving at the time the request for review is submitted and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide the health service if requested by the enrollee until a determination is made under this section. If the determination affirms the carrier's decision, the enrollee may be responsible for the cost of the continued health service.

(9) A certified independent review organization may notify the office of the insurance commissioner if, based upon its review of disputes under this section, it finds a pattern of substandard or egregious conduct by a carrier.

(10)(a) The commissioner shall adopt rules to implement this section after considering relevant standards adopted by national managed care accreditation organizations.

(b) This section is not intended to supplant any existing authority of the office of the insurance commissioner under this title to oversee and enforce carrier compliance with applicable statutes and rules.

NEW SECTION. Sec. 12. A new section is added to chapter 43.70 RCW to read as follows:

INDEPENDENT REVIEW ORGANIZATIONS. (1) The department shall adopt rules providing a procedure and criteria for certifying one or more organizations to perform independent review of health care disputes described in section 11 of this act.

(2) The rules must require that the organization ensure:

(a) The confidentiality of medical records transmitted to an independent review organization for use in independent reviews;

(b) That each health care provider, physician, or contract specialist making review determinations for an independent review organization is qualified. Physicians, other health care providers, and, if applicable, contract specialists must be appropriately licensed, certified, or registered as required in Washington state or in at least one state with standards substantially comparable to Washington state. Reviewers may be drawn from nationally recognized centers of excellence, academic institutions, and recognized leading practice sites. Expert medical reviewers should have substantial, recent clinical experience dealing with the same or similar health conditions. The organization must have demonstrated expertise and a history of reviewing health care in terms of medical necessity, appropriateness, and the application of other health plan coverage provisions;

(c) That any physician, health care provider, or contract specialist making a review determination in a specific review is free of any actual or potential conflict of interest or bias. Neither the expert reviewer, nor the independent review organization, nor any officer, director, or management employee of the independent review organization may have any material professional, familial, or financial affiliation with any of the following: The health carrier; professional associations of carriers and providers; the provider; the provider's medical or practice group; the health facility at which the service would be provided; the developer or manufacturer of a drug or device under review; or the enrollee;

(d) The fairness of the procedures used by the independent review organization in making the determinations;

(e) That each independent review organization make its determination:

(i) Not later than the earlier of:

(A) The fifteenth day after the date the independent review organization receives the information necessary to make the determination; or

(B) The twentieth day after the date the independent review organization receives the request that the determination be made. In exceptional circumstances, when the independent review organization has not obtained information necessary to make a determination, a determination may be made by the twenty-fifth day after the date the organization received the request for the determination; and

(ii) In cases of a condition that could seriously jeopardize the enrollee's health or ability to regain maximum function, not later than the earlier of:

(A) Seventy-two hours after the date the independent review organization receives the information necessary to make the determination; or

(B) The eighth day after the date the independent review organization receives the request that the determination be made;

(f) That timely notice is provided to enrollees of the results of the independent review, including the clinical basis for the determination;

(g) That the independent review organization has a quality assurance mechanism in place that ensures the timeliness and quality of review and communication of determinations to enrollees and carriers, and the qualifications,

impartiality, and freedom from conflict of interest of the organization, its staff, and expert reviewers; and

(h) That the independent review organization meets any other reasonable requirements of the department directly related to the functions the organization is to perform under this section and section 11 of this act.

(3) To be certified as an independent review organization under this chapter, an organization must submit to the department an application in the form required by the department. The application must include:

(a) For an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the applicant that exceed one hundred thousand dollars;

(c) The name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under (c) of this subsection and a description of any relationship the named individual has with:

(i) A carrier;

(ii) A utilization review agent;

(iii) A nonprofit or for-profit health corporation;

(iv) A health care provider;

(v) A drug or device manufacturer; or

(vi) A group representing any of the entities described by (d)(i) through (v) of this subsection;

(e) The percentage of the applicant's revenues that are anticipated to be derived from reviews conducted under section 11 of this act;

(f) A description of the areas of expertise of the health care professionals and contract specialists making review determinations for the applicant; and

(g) The procedures to be used by the independent review organization in making review determinations regarding reviews conducted under section 11 of this act.

(4) If at any time there is a material change in the information included in the application under subsection (3) of this section, the independent review organization shall submit updated information to the department.

(5) An independent review organization may not be a subsidiary of, or in any way owned or controlled by, a carrier or a trade or professional association of health care providers or carriers.

(6) An independent review organization, and individuals acting on its behalf, are immune from suit in a civil action when performing functions under this act. However, this immunity does not apply to an act or omission made in bad faith or that involves gross negligence.

(7) Independent review organizations must be free from interference by state government in its functioning except as provided in subsection (8) of this section.

(8) The rules adopted under this section shall include provisions for terminating the certification of an independent review organization for failure to comply with the requirements for certification. The department may review the operation and performance of an independent review organization in response to complaints or other concerns about compliance.

(9) In adopting rules for this section, the department shall take into consideration standards for independent review organizations adopted by national accreditation organizations. The department may accept national accreditation or certification by another state as evidence that an organization satisfies some or all of the requirements for certification by the department as an independent review organization.

NEW SECTION. Sec. 13. CARRIER MEDICAL DIRECTOR. Any carrier that offers a health plan and any self-insured health plan subject to the jurisdiction of Washington state shall designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. However, a naturopathic or complementary alternative health plan, which provides solely complementary alternative health care to individuals, groups, or health plans, may have a medical director licensed under chapter 18.36A RCW. A health plan or self-insured health plan that offers only religious nonmedical treatment or religious nonmedical nursing care shall not be required to have a medical director.

Sec. 14. RCW 51.04.020 and 1994 c 164 s 24 are each amended to read as follows:

The director shall:

- (1) Establish and adopt rules governing the administration of this title;
- (2) Ascertain and establish the amounts to be paid into and out of the accident fund;
- (3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency;
- (4) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;
- (5) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;
- (6) Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department;
- (7) Compile statistics which will afford reliable information upon which to base operations of all divisions under the department;
- (8) Make an annual report to the governor of the workings of the department;
- (9) Be empowered to enter into agreements with the appropriate agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and injuries are received in the other state, and insofar as permitted

by the Constitution and laws of the United States, to enter into similar agreements with the provinces of Canada; and

(10) Designate a medical director who is licensed under chapter 18.57 or 18.71 RCW.

Sec. 15. RCW 74.09.050 and 1979 c 141 s 335 are each amended to read as follows:

The secretary shall appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter. The medical screeners shall be supervised by one or more physicians who shall be appointed by the secretary or his or her designee. The secretary shall appoint a medical director who is licensed under chapter 18.57 or 18.71 RCW.

NEW SECTION. **Sec. 16.** A new section is added to chapter 41.05 RCW to read as follows:

HEALTH CARE AUTHORITY MEDICAL DIRECTOR. The administrator shall designate a medical director who is licensed under chapter 18.57 or 18.71 RCW.

NEW SECTION. **Sec. 17. CARRIER LIABILITY.** (1)(a) A health carrier shall adhere to the accepted standard of care for health care providers under chapter 7.70 RCW when arranging for the provision of medically necessary health care services to its enrollees. A health carrier shall be liable for any and all harm proximately caused by its failure to follow that standard of care when the failure resulted in the denial, delay, or modification of the health care service recommended for, or furnished to, an enrollee.

(b) A health carrier is also liable for damages under (a) of this subsection for harm to an enrollee proximately caused by health care treatment decisions that result from a failure to follow the accepted standard of care made by its:

- (i) Employees;
- (ii) Agents; or
- (iii) Ostensible agents who are acting on its behalf and over whom it has the right to exercise influence or control or has actually exercised influence or control.

(2) The provisions of this section may not be waived, shifted, or modified by contract or agreement and responsibility for the provisions shall be a duty that cannot be delegated. Any effort to waive, modify, delegate, or shift liability for a breach of the duty established by this section, through a contract for indemnification or otherwise, is invalid.

(3) This section does not create any new cause of action, or eliminate any presently existing cause of action, with respect to health care providers and health care facilities that are included in and subject to the provisions of chapter 7.70 RCW.

(4) It is a defense to any action or liability asserted under this section against a health carrier that:

(a) The health care service in question is not a benefit provided under the plan or the service is subject to limitations under the plan that have been exhausted;

(b) Neither the health carrier, nor any employee, agent, or ostensible agent for whose conduct the health carrier is liable under subsection (1)(b) of this section, controlled, influenced, or participated in the health care decision; or

(c) The health carrier did not deny or unreasonably delay payment for treatment prescribed or recommended by a participating health care provider for the enrollee.

(5) This section does not create any liability on the part of an employer, an employer group purchasing organization that purchases coverage or assumes risk on behalf of its employers, or a governmental agency that purchases coverage on behalf of individuals and families. The governmental entity established to offer and provide health insurance to public employees, public retirees, and their covered dependents under RCW 41.05.140 is subject to liability under this section.

(6) Nothing in any law of this state prohibiting a health carrier from practicing medicine or being licensed to practice medicine may be asserted as a defense by the health carrier in an action brought against it under this section.

(7)(a) A person may not maintain a cause of action under this section against a health carrier unless:

(i) The affected enrollee has suffered substantial harm. As used in this subsection, "substantial harm" means loss of life, loss or significant impairment of limb, bodily or cognitive function, significant disfigurement, or severe or chronic physical pain; and

(ii) The affected enrollee or the enrollee's representative has exercised the opportunity established in section 11 of this act to seek independent review of the health care treatment decision.

(b) This subsection (7) does not prohibit an enrollee from pursuing other appropriate remedies, including injunctive relief, a declaratory judgment, or other relief available under law, if its requirements place the enrollee's health in serious jeopardy.

(8) In an action against a health carrier, a finding that a health care provider is an employee, agent, or ostensible agent of such a health carrier shall not be based solely on proof that the person's name appears in a listing of approved physicians or health care providers made available to enrollees under a health plan.

(9) Any action under this section shall be commenced within three years of the completion of the independent review process.

(10) This section does not apply to workers' compensation insurance under Title 51 RCW.

NEW SECTION. Sec. 18. DELEGATION OF DUTIES. Each carrier is accountable for and must oversee any activities required by this act that it delegates to any subcontractor. No contract with a subcontractor executed by the health carrier or the subcontractor may relieve the health carrier of its obligations to any

enrollee for the provision of health care services or of its responsibility for compliance with statutes or rules.

NEW SECTION. Sec. 19. APPLICATION. This act applies to: Health plans as defined in RCW 48.43.005 offered, renewed, or issued by a carrier; medical assistance provided under RCW 74.09.522; the basic health plan offered under chapter 70.47 RCW; and health benefits provided under chapter 41.05 RCW.

NEW SECTION. Sec. 20. A new section is added to chapter 41.05 RCW to read as follows:

Each health plan that provides medical insurance offered under this chapter, including plans created by insuring entities, plans not subject to the provisions of Title 48 RCW, and plans created under RCW 41.05.140, are subject to the provisions of sections 1, 2, 5 through 12, 17, 18, and RCW 70.02.110 and 70.02.900.

Sec. 21. RCW 70.47.130 and 1997 c 337 s 8 are each amended to read as follows:

(1) The activities and operations of the Washington basic health plan under this chapter, including those of managed health care systems to the extent of their participation in the plan, are exempt from the provisions and requirements of Title 48 RCW except:

(a) Benefits as provided in RCW 70.47.070;

(b) Managed health care systems are subject to the provisions of sections 1, 2, 5 through 12, 17, 18, and RCW 70.02.110 and 70.02.900;

(c) Persons appointed or authorized to solicit applications for enrollment in the basic health plan, including employees of the health care authority, must comply with chapter 48.17 RCW. For purposes of this subsection (1)((b)) (c), "solicit" does not include distributing information and applications for the basic health plan and responding to questions; and

((e)) (d) Amounts paid to a managed health care system by the basic health plan for participating in the basic health plan and providing health care services for nonsubsidized enrollees in the basic health plan must comply with RCW 48.14.0201.

(2) The purpose of the 1994 amendatory language to this section in chapter 309, Laws of 1994 is to clarify the intent of the legislature that premiums paid on behalf of nonsubsidized enrollees in the basic health plan are subject to the premium and prepayment tax. The legislature does not consider this clarifying language to either raise existing taxes nor to impose a tax that did not exist previously.

NEW SECTION. Sec. 22. This act may be known and cited as the health care patient bill of rights.

NEW SECTION. Sec. 23. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2000, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 24. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 25. Sections 1, 5 through 11, 13, 17, and 18 of this act are each added to chapter 48.43 RCW.

NEW SECTION. Sec. 26. To the extent permitted by law, if any provision of this act conflicts with state or federal law, such provision must be construed in a manner most favorable to the enrollee.

NEW SECTION. Sec. 27. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 28. EFFECTIVE DATE. (1) Except as provided in subsections (2) and (3) of this section, this act applies to contracts entered into or renewing after June 30, 2001.

(2) Sections 13, 14, 15, and 16 of this act take effect January 1, 2001.

(3) Section 29 of this act takes effect July 1, 2001.

NEW SECTION. Sec. 29. The following acts or parts of acts are each repealed:

(1) RCW 48.43.075 (Informing patients about their care—Health carriers may not preclude or discourage) and 1996 c 312 s 2; and

(2) RCW 48.43.095 (Information provided to an enrollee or a prospective enrollee) and 1996 c 312 s 4.

Passed the Senate March 6, 2000.

Passed the House March 3, 2000.

Approved by the Governor March 15, 2000.

Filed in Office of Secretary of State March 15, 2000.

CHAPTER 6

[Engrossed House Bill 1711]

HOSPITAL INFORMATION—DISCLOSURE

AN ACT Relating to the disclosure of hospital information; amending RCW 70.41.150 and 70.41.200; reenacting and amending RCW 42.17.310; and adding new sections to chapter 70.41 RCW.

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

Sec. 1. RCW 70.41.150 and 1985 c 213 s 24 are each amended to read as follows:

Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, ~~((shall not))~~ may be disclosed publicly ~~((in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure. Such records of the department shall at all times be available to the council and the members thereof)),~~ as permitted under chapter 42.17 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the hospital has received the resulting assessment report;

(2) Information regarding administrative action against the license shall, as requested, be disclosed after the hospital has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the hospital and the complainant that the complaint did not warrant an investigation. If requested, the individual complainant shall receive information on other like complaints that have been reported against the hospital; and

(4) Information disclosed pursuant to this section shall not disclose individual names.

NEW SECTION. Sec. 2. A new section is added to chapter 70.41 RCW to read as follows:

Any complaint against a hospital and event notification required by the department that concerns patient well-being shall be investigated.

Sec. 3. RCW 70.41.200 and 1994 sp.s. c 9 s 742 are each amended to read as follows:

(1) Every hospital shall 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. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ~~((insure))~~ ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards,

costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) 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.

(3) 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 which 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, 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) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) Violation of this section shall not be considered negligence per se.

NEW SECTION. Sec. 4. A new section is added to chapter 70.41 RCW to read as follows:

Every hospital shall post in conspicuous locations a notice of the department's hospital complaint toll-free telephone number. The form of the notice shall be approved by the department.

Sec. 5. RCW 42.17.310 and 1999 c 326 s 3, 1999 c 290 s 1, and 1999 c 215 s 1 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 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, computer source code or object code, 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, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 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, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(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

unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(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 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained

in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION. Sec. 6. A new section is added to chapter 70.41 RCW to read as follows:

The department is authorized to adopt rules necessary to implement sections 1, 2, and 4 of this act.

Passed the House February 10, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 7

[House Bill 2031]

WOMEN'S HEALTH CARE—MIDWIVES AS HEALTH CARE PRACTITIONERS

AN ACT Relating to adding midwives to the definition of health care practitioners that provide women's health care services; and amending RCW 48.42.100.

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

Sec. 1. RCW 48.42.100 and 1995 c 389 s 1 are each amended to read as follows:

(1) For purposes of this section, health care carriers includes disability insurers regulated under chapter 48.20 or 48.21 RCW, health care services contractors regulated under chapter 48.44 RCW, health maintenance organizations regulated under chapter 48.46 RCW, plans operating under the health care authority under

chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated under chapter 48.43 RCW.

(2) For purposes of this section and consistent with their lawful scopes of practice, types of health care practitioners that provide women's health care services shall include, but need not be limited by a health care carrier to, the following: Any generally recognized medical specialty of practitioners licensed under chapter 18.57 or 18.71 RCW who provides women's health care services; practitioners licensed under chapters 18.57A and 18.71A RCW when providing women's health care services; midwives licensed under chapter 18.50 RCW; and advanced registered nurse practitioner specialists in women's health and midwifery under chapter 18.79 RCW.

(3) For purposes of this section, women's health care services shall include, but need not be limited by a health care carrier to, the following: Maternity care; reproductive health services; gynecological care; general examination; and preventive care as medically appropriate and medically appropriate follow-up visits for the services listed in this subsection.

(4) Health care carriers shall ensure that enrolled female patients have direct access to timely and appropriate covered women's health care services from the type of health care practitioner of their choice in accordance with subsection (5) of this section.

(5)(a) Health care carrier policies, plans, and programs written, amended, or renewed after July 23, 1995, shall provide women patients with direct access to the type of health care practitioner of their choice for appropriate covered women's health care services without the necessity of prior referral from another type of health care practitioner.

(b) Health care carriers may comply with this section by including all the types of health care practitioners listed in this section for women's health care services for women patients.

(c) Nothing in this section shall prevent health care carriers from restricting women patients to seeing only health care practitioners who have signed participating provider agreements with the health care carrier.

Passed the House February 9, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 8

[Engrossed Substitute House Bill 2798]
PRESCRIPTIONS—LEGIBILITY

AN ACT Relating to legibility of prescriptions; amending RCW 69.41.120; reenacting and amending RCW 69.41.010; adding a new section to chapter 69.41 RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that we have one of the finest health care systems in the world and excellent professionals to deliver that care. However, there are incidents of medication errors that are avoidable and serious mistakes that are preventable. Medical errors throughout the health care system constitute one of the nation's leading causes of death and injury resulting in over seven thousand deaths a year, according to a recent report from the institute of medicine. The majority of medical errors do not result from individual recklessness, but from basic flaws in the way the health system is organized. There is a need for a comprehensive strategy for government, industry, consumers, and health providers to reduce medical errors. The legislature declares a need to bring about greater safety for patients in this state who depend on prescription drugs.

It is the intent of the legislature to promote medical safety as a top priority for all citizens of our state.

Sec. 2. RCW 69.41.010 and 1998 c 222 s 1 and 1998 c 70 s 2 are each reenacted and amended to read as follows:

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

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (a) A practitioner; or
- (b) The patient or research subject at the direction of the practitioner.

(2) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(3) "Department" means the department of health.

(4) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(5) "Dispenser" means a practitioner who dispenses.

(6) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(7) "Distributor" means a person who distributes.

(8) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(9) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(10) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(11) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order.

(12) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based setting specified in RCW 69.41.085 to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. The nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined, in consultation with the individual or the individual's representative, that such medication assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications.

~~((12))~~ (13) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

~~((13))~~ (14) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, or a pharmacist under chapter 18.64 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

~~((14))~~ (15) "Secretary" means the secretary of health or the secretary's designee.

Sec. 3. RCW 69.41.120 and 1990 c 218 s 1 are each amended to read as follows:

Every drug prescription shall contain an instruction on whether or not a therapeutically equivalent generic drug may be substituted in its place, unless substitution is permitted under a prior-consent authorization.

If a written prescription is involved, the prescription must be legible and the form shall have two signature lines at opposite ends on the bottom of the form. Under the line at the right side shall be clearly printed the words "DISPENSE AS WRITTEN". Under the line at the left side shall be clearly printed the words "SUBSTITUTION PERMITTED". The practitioner shall communicate the instructions to the pharmacist by signing the appropriate line. No prescription shall be valid without the signature of the practitioner on one of these lines. In the case of a prescription issued by a practitioner in another state that uses a one-line prescription form or variation thereof, the pharmacist may substitute a therapeutically equivalent generic drug unless otherwise instructed by the practitioner through the use of the words "dispense as written", words of similar meaning, or some other indication.

If an oral prescription is involved, the practitioner or the practitioner's agent shall instruct the pharmacist as to whether or not a therapeutically equivalent generic drug may be substituted in its place. The pharmacist shall note the instructions on the file copy of the prescription.

The pharmacist shall note the manufacturer of the drug dispensed on the file copy of a written or oral prescription.

NEW SECTION. **Sec. 4.** A new section is added to chapter 69.41 RCW to read as follows:

(1) In consultation with the board of pharmacy and professional licensing boards of providers with prescribing authority, the department will develop recommendations on methods for reducing medication errors including:

- (a) Increasing prescription legibility;
- (b) Minimizing confusion in prescription drug labeling and packaging;
- (c) Developing medication error reporting plans;
- (d) Encouraging hospitals and health care organizations to implement proven medication safety practices, including the use of automated drug-ordering systems;
- (e) Reducing confusion created by similar-sounding drug names; and
- (f) Increasing patient education on the medications they are prescribed.

(2) The department shall submit its recommendations to the legislature by December 31, 2000.

(3) This section expires June 30, 2001.

Passed the House February 9, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 9

[House Bill 2328]

UNLAWFUL HARASSMENT—FILING FEES

AN ACT Relating to fees for filing a petition for unlawful harassment; and amending RCW 36.18.020.

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

Sec. 1. RCW 36.18.020 and 1999 c 42 s 635 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:

(a) The party filing the first or initial paper in any civil action, including, but not limited to an action for restitution, adoption, or change of name, shall pay, at the time the paper is filed, a fee of one hundred ten dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of thirty 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. 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.

(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 the paper is filed, a fee of one hundred ten dollars.

(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))~~ forty-one dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of one hundred ten 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.

(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 11.96A.220, there shall be paid a fee of one hundred ten dollars.

(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.

(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.

(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.

Passed the House January 31, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 10

[Substitute House Bill 2367]

TEMPORARY ASSISTANCE TO NEEDY FAMILIES--WORK ACTIVITY TO INCLUDE HIGHER EDUCATION PROGRAMS

AN ACT Relating to public assistance recipients participating in higher education programs; and amending RCW 74.08A.250.

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

Sec. 1. RCW 74.08A.250 and 1997 c 58 s 311 are each amended to read as follows:

Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

- (1) Unsubsidized paid employment in the private or public sector;
- (2) Subsidized paid employment in the private or public sector, including employment through the state or federal work-study program for a period not to exceed twenty-four months;
- (3) Work experience, including:
 - (a) An internship or practicum, that is paid or unpaid and is required to complete a course of vocational training or to obtain a license or certificate in a high demand field, as determined by the employment security department. No internship or practicum shall exceed twelve months; or
 - (b) Work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;

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- (4) On-the-job training;
- (5) Job search and job readiness assistance;
- (6) Community service programs;
- (7) Vocational educational training, not to exceed twelve months with respect to any individual;
- (8) Job skills training directly related to employment;
- (9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a GED;
- (10) Satisfactory attendance at secondary school or in a course of study leading to a GED, in the case of a recipient who has not completed secondary school or received such a certificate;
- (11) The provision of child care services to an individual who is participating in a community service program; ~~(and)~~
- (12) Internships, that shall be paid or unpaid work experience performed by an intern in a business, industry, or government or nongovernmental agency setting;
- (13) Practicums, which include any educational program in which a student is working under the close supervision of a professional in an agency, clinic, or other professional practice setting for purposes of advancing their skills and knowledge; and
- (14) Services required by the recipient under RCW 74.08.025(3) and 74.08A.010(3) to become employable.

Passed the House February 10, 2000.
 Passed the Senate March 1, 2000.
 Approved by the Governor March 17, 2000.
 Filed in Office of Secretary of State March 17, 2000.

CHAPTER 11

[Substitute House Bill 2399]

NATURAL RESOURCES—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to various natural resource laws; amending RCW 76.01.060, 76.06.020, 76.09.040, 76.09.055, 76.09.065, 76.09.140, 76.09.150, 76.12.090, 76.12.100, 76.12.140, 76.13.010, 76.13.110, 76.13.120, 76.14.010, 76.15.010, 76.36.010, 76.42.020, 76.48.020, 76.48.085, 78.16.070, 78.44.020, 78.44.031, 79.08.275, 79.24.570, 79.71.090, 79.71.100, 79.92.070, 79.92.080, 79.94.070, 79.96.110, 79A.05.155, 79A.05.200, 79A.05.205, 79A.05.250, 79A.05.255, 79A.05.265, 79A.05.300, 79A.05.315, 79A.05.320, 79A.05.405, 79A.05.420, 79A.05.500, 79A.05.520, 79A.05.535, 79A.05.540, 79A.05.610, 79A.05.615, 79A.05.620, 79A.05.625, 79A.05.630, 79A.05.635, 79A.05.640, 79A.05.645, 79A.05.650, 79A.05.655, 79A.05.665, 79A.05.685, 79A.05.693, 79A.05.695, 79A.05.735, 79A.05.750, 79A.05.765, 79A.05.780, 79A.05.793, 79A.15.020, 79A.15.030, 79A.15.060, 79A.15.070, 79A.25.020, 79A.25.030, 79A.25.040, 79A.25.060, 79A.25.070, 79A.25.080, 79A.25.100, 79A.25.180, 79A.25.200, 79A.25.240, 79A.25.250, 79A.25.800, 79A.25.820, 79A.25.830, 79A.30.010, 79A.30.020, 79A.30.030, 79A.35.030, 79A.40.020, 79A.40.030, 79A.40.060, 79A.40.080, 79A.45.040, 79A.60.010, 79A.60.030, 79A.60.050, 79A.60.060, 79A.60.070, 79A.60.130, 79A.60.160, 79A.60.170, 79A.60.180, 79A.60.190, 79A.60.200, 79A.60.300, 79A.60.400, 79A.60.410, 79A.60.420, 79A.60.440, 79A.60.470, 79A.60.480, 79A.60.485, 79A.60.490, 79A.60.540, 79A.60.590, 79A.60.620, 79A.65.010, 79A.65.030, and 79A.65.040; and repealing RCW 75.08.274, 75.25.090, 75.28.012, 76.12.200, and 77.32.060.

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

Sec. 1. RCW 76.01.060 and 1983 c 3 s 194 are each amended to read as follows:

Any authorized assistants, employees, agents, appointees or representatives of the department of natural resources may, in the course of their inspection and enforcement duties as provided for in chapters 76.04, 76.06, 76.09, 76.16, and 76.36 (~~and 76.40~~) RCW, enter upon any lands, real estate, waters or premises except the dwelling house or appurtenant buildings in this state whether public or private and remain thereon while performing such duties. Similar entry by the department of natural resources may be made for the purpose of making examinations, locations, surveys and/or appraisals of all lands under the management and jurisdiction of the department of natural resources; or for making examinations, appraisals and, after five days' written notice to the landowner, making surveys for the purpose of possible acquisition of property to provide public access to public lands. In no event other than an emergency such as fire fighting shall motor vehicles be used to cross a field customarily cultivated, without prior consent of the owner. None of the entries herein provided for shall constitute trespass, but nothing contained herein shall limit or diminish any liability which would otherwise exist as a result of the acts or omissions of said department or its representatives.

EXPLANATORY NOTE

Chapter 76.40 RCW was repealed by 1994 c 163 s 6.

Sec. 2. RCW 76.06.020 and 1988 c 128 s 15 are each amended to read as follows:

As used in this chapter:

(1) "Agent" means the recognized legal representative, representatives, agent, or agents for any owner;

(2) "Department" means the department of natural resources;

(3) "Owner" means and includes individuals, partnerships, corporations, and associations;

~~(("Agent" means the recognized legal representative, representatives, agent or agents for any owner;))~~

(4) "Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the department, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration.

EXPLANATORY NOTE

Numbers the definitions and places them in alphabetical order.

Sec. 3. RCW 76.09.040 and 1999 1st sp.s. c 4 s 701 are each amended to read as follows:

(1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

- (a) Establish minimum standards for forest practices;
- (b) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;
- (c) Set forth necessary administrative provisions;
- (d) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and
- (e) Allow for the development of watershed analyses.

Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2) The board shall prepare proposed forest practices rules. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

Prior to initiating the rule making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. At such hearing(s) any county may propose specific forest practices rules relating to problems existing within such county. The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3) The board shall establish by rule a riparian open space program that includes acquisition of a fee interest in, or at the landowner's option, a conservation easement on lands within unconfined avulsing channel migration zones. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or

transferred to a private nonprofit nature (~~(conservation—[conservancy])~~) conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. Because there are few, if any, comparable sales of forest land within unconfined avulsing channel migration zones, separate from the other lands or assets, these lands are likely to be extraordinarily difficult to appraise and the cost of a conventional appraisal often would be unreasonable in relation to the value of the land involved. Therefore, for the purposes of voluntary sales under this section, the legislature declares that these lands are presumed to have a value equal to: (a) The acreage in the sale multiplied by the average value of commercial forest land in the region under the land value tables used for property tax purposes under RCW 84.33.120; plus (b) the cruised volume of any timber located within the channel migration multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091. For purposes of this section, there shall be an eastside region and a westside region as defined in the forests and fish report as defined in RCW 76.09.020.

(4) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department is directed to purchase a fee interest or, at the owner's option, a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined avulsing channel migration zone. Lands acquired under this section shall become riparian open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(5) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(6) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space.

EXPLANATORY NOTE

Corrects the reference to a nature conservancy corporation.

Sec. 4. RCW 76.09.055 and 1999 1st sp.s. c 4 s 201 are each amended to read as follows:

(1) The legislature finds that the declines of fish stocks throughout much of the state (~~(requires—require))~~ require immediate action to be taken to help restore these fish runs where possible. The legislature also recognizes that federal and

state agencies, tribes, county representatives, and private timberland owners have spent considerable effort and time to develop the forests and fish report. Given the agreement of the parties, the legislature believes that the immediate adoption of emergency rules is appropriate in this particular instance. These rules can implement many provisions of the forests and fish report to protect the economic well-being of the state, and to minimize the risk to the state and landowners to legal challenges. This authority is not designed to set any precedents for the forest practices board in future rule making or set any precedents for other rule-making bodies of the state.

(2) The forest practices board is authorized to adopt emergency rules amending the forest practices rules with respect to the protection of aquatic resources, in accordance with RCW 34.05.350, except: (a) That the rules adopted under this section may remain in effect until permanent rules are adopted, or until June 30, 2001, whichever is sooner; (b) notice of the proposed rules must be published in the Washington State Register as provided in RCW 34.05.320; (c) at least one public hearing must be conducted with an opportunity to provide oral and written comments; and (d) a rule-making file must be maintained as required by RCW 34.05.370. In adopting the emergency rules, the board is not required to prepare a small business economic impact statement under chapter 19.85 RCW, prepare a statement indicating whether the rules constitute a significant legislative rule under RCW 34.05.328, prepare a significant legislative rule analysis under RCW 34.05.328, or follow the procedural requirements of the state environmental policy act, chapter 43.21C RCW. The forest practices board may only adopt recommendations contained in the forests and fish report as emergency rules under this section.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 5. RCW 76.09.065 and 1997 c 173 s 4 are each amended to read as follows:

(1) Effective July 1, 1997, an applicant shall pay an application fee and a recording fee, if applicable, at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

(2) For applications and notifications submitted to the department, the application fee shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forest landowner provides:

(a) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years,

accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(b) A conversion option harvest plan approved by the local (~~government~~ ~~governmental~~) governmental entity and submitted to the department as part of the forest practices application.

All money collected from fees under this subsection shall be deposited in the state general fund.

(3) For applications submitted to the local governmental entity, the fee shall be five hundred dollars for class IV forest practices on lands being converted to other uses or lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except as otherwise provided in this section, unless a different fee is otherwise provided by the local governmental entity.

(4) Recording fees shall be as provided in chapter 36.18 RCW.

(5) An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 6. RCW 76.09.140 and 1999 1st sp.s. c 4 s 801 are each amended to read as follows:

(1) The department of natural resources may take any necessary action to enforce any final order or final decision, and may disapprove any forest practices application or notification submitted by any person who has failed to comply with a final order or final decision or has failed to pay any civil penalties as provided in RCW 76.09.170, for up to one year from the issuance of a notice of intent to disapprove notifications and applications under this section or until the violator pays all outstanding civil penalties and complies with all validly issued and outstanding notices to comply and stop work orders, whichever is longer. For purposes of chapter 482, Laws of 1993, the terms "final order" and "final decision" shall mean the same as set forth in RCW 76.09.080, 76.09.090, and 76.09.110. The department shall provide written notice of its intent to disapprove an application or notification under this subsection. The department shall forward copies of its notice of intent to disapprove to any affected landowner. The disapproval period shall run from thirty days following the date of actual notice or when all administrative and judicial appellate processes, if any, have been exhausted. Any person provided the notice may seek review from the appeals board by filing a request for review within thirty days of the date of the notice of intent. While the notice of intent to disapprove is in effect, the violator may not serve as a person in charge of, be employed by, manage, or otherwise participate to any degree in forest practices.

(2) On request of the department, the attorney general may take action necessary to enforce this chapter, including, but not limited to: Seeking penalties, interest, costs, and attorneys' fees; enforcing final orders or decisions; and seeking civil injunctions, show cause orders, or contempt orders.

(3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest landowner, timber owner or operator to enforce the forest (~~practice(s)~~) practices rules or any final order of the department, or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. Injunctions, declaratory actions, or other actions for enforcement under this subsection may not be commenced unless the department fails to take appropriate action after ten days written notice to the department by the county of a violation of the forest practices rules or final orders of the department or the appeals board.

(4)(a) The department may require financial assurance prior to the conduct of any further forest practices from an operator or landowner who within the preceding three-year period has:

(i) Operated without an approved forest practices application, other than an unintentional operation in connection with an approved application outside the approved boundary of such an application;

(ii) Continued to operate in breach of, or failed to comply with, the terms of an effective stop work order or notice to comply; or

(iii) Failed to pay any civil or criminal penalty.

(b) The department may deny any application for failure to submit financial assurances as required.

EXPLANATORY NOTE

Corrects the reference to forest practices.

Sec. 7. RCW 76.09.150 and 1999 1st sp.s. c 4 s 802 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department or the department of ecology may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest ((practice[s])) practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

EXPLANATORY NOTE

Corrects the reference to forest practices.

Sec. 8. RCW 76.12.090 and 1988 c 128 s 29 are each amended to read as follows:

For the purpose of acquiring and paying for lands for state forests and reforestation as herein provided the department may issue utility bonds of the state of Washington, in an amount not to exceed two hundred thousand dollars in principal, during the biennium expiring March 31, 1925, and such other amounts as may hereafter be authorized by the legislature. Said bonds shall bear interest at not to exceed the rate of two percent per annum which shall be payable annually. Said bonds shall never be sold or exchanged at less than par and accrued interest, if any, and shall mature in not less than a period equal to the time necessary to develop a merchantable forest on the lands exchanged for said bonds or purchased with money derived from the sale thereof. Said bonds shall be known as state forest utility bonds. The principal or interest of said bonds shall not be a general obligation of the state, but shall be payable only from the forest development account. The department may issue said bonds in exchange for lands selected by it in accordance with RCW 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, and 76.12.140, ((and 76.12.150;)) or may sell said bonds in such manner as it deems advisable, and with the proceeds purchase and acquire such lands. Any of said bonds issued in exchange and payment for any particular tract of lands may be made a first and prior lien against the particular land for which they are exchanged, and upon failure to pay said bonds and interest thereon according to their terms, the lien of said bonds may be foreclosed by appropriate court action.

EXPLANATORY NOTE

RCW 76.12.150 was repealed by 1977 c 75 s 96.

Sec. 9. RCW 76.12.100 and 1988 c 128 s 30 are each amended to read as follows:

For the purpose of acquiring, seeding, reforestation and administering land for forests and of carrying out RCW 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, and 76.12.140, (~~and 76.12.150;~~) the department is authorized to issue and dispose of utility bonds of the state of Washington in an amount not to exceed one hundred thousand dollars in principal during the biennium expiring March 31, 1951: PROVIDED, HOWEVER, That no sum in excess of one dollar per acre shall ever be paid or allowed either in cash, bonds, or otherwise, for any lands suitable for forest growth, but devoid of such, nor shall any sum in excess of three dollars per acre be paid or allowed either in cash, bonds, or otherwise, for any lands adequately restocked with young growth.

Any utility bonds issued under the provisions of this section may be retired from time to time, whenever there is sufficient money in the forest development account, said bonds to be retired at the discretion of the department either in the order of issuance, or by first retiring bonds with the highest rate of interest.

EXPLANATORY NOTE

RCW 76.12.150 was repealed by 1977 c 75 s 96.

Sec. 10. RCW 76.12.140 and 1988 c 128 s 33 are each amended to read as follows:

Any lands acquired by the state under RCW 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, and 76.12.140, (~~and 76.12.150;~~) or any amendments thereto, shall be logged, protected and cared for in such manner as to insure natural reforestation of such lands, and to that end the department shall have power, and it shall be its duty to make rules and regulations, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and protection and promotion of new forests. All such rules and regulations, or amendments thereto, shall be adopted by the department under chapter 34.05 RCW. Any violation of any such rules shall be a gross misdemeanor unless the department has specified by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW.

EXPLANATORY NOTE

RCW 76.12.150 was repealed by 1977 c 75 s 96.

Sec. 11. RCW 76.13.010 and 1999 1st sp.s. c 4 s 502 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply to RCW 76.13.005, 76.13.007, 76.13.020, and 76.13.030.

(1) "Cooperating organization" means federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations which promote and

maintain programs designed to provide information and technical assistance services to nonindustrial forest and woodland owners.

(2) "Department" means the department of natural resources.

~~((2))~~ (3) "Landowner" means an individual, partnership, private, public or municipal corporation, Indian tribe, state agency, county, or local government entity, educational institution, or association of individuals of whatever nature that own nonindustrial forests and woodlands.

~~((3))~~ (4) "Nonindustrial forests and woodlands" are those suburban acreages and rural lands supporting or capable of supporting trees and other flora and fauna associated with a forest ecosystem, comprised of total individual land ownerships of less than five thousand acres and not directly associated with wood processing or handling facilities.

~~((4))~~ (5) "Stewardship" means managing by caring for, promoting, protecting, renewing, or reestablishing or both, forests and associated resources for the benefit of the landowner, the natural resources and the citizens of Washington state, in accordance with each landowner's objectives, best management practices, and legal requirements.

~~((5) "Cooperating organization" means federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations which promote and maintain programs designed to provide information and technical assistance services to nonindustrial forest and woodland owners.))~~

EXPLANATORY NOTE

Arranges definitions in alphabetical order.

Sec. 12. RCW 76.13.110 and 1999 1st sp.s. c 4 s 503 are each amended to read as follows:

(1) The department of natural resources shall establish and maintain a small forest landowner office. The small forest landowner office shall be a resource and focal point for small forest landowner concerns and policies, and shall have significant expertise regarding the management of small forest holdings, governmental programs applicable to such holdings, and the forestry riparian easement program.

(2) The small forest landowner office shall administer the provisions of the forestry riparian easement program created under RCW 76.13.120. With respect to that program, the office shall have the authority to contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements.

(3) The small forest landowner office shall assist in the development of small landowner options through alternate management plans or alternate harvest restrictions appropriate to small landowners. The small forest landowner office shall develop criteria to be adopted by the forest practices board in a manual for alternate management plans or alternate harvest restrictions. These alternate plans or alternate harvest restrictions shall meet riparian functions while requiring less

costly regulatory prescriptions. At the landowner's option, alternate plans or alternate harvest restrictions may be used to further meet riparian functions.

The small (~~(forest)~~) forest landowner office shall evaluate the cumulative impact of such alternate management plans or alternate harvest restrictions on essential riparian functions at the subbasin or watershed level. The small forest landowner office shall adjust future alternate management plans or alternate harvest restrictions in a manner that will minimize the negative impacts on essential riparian functions within a subbasin or watershed.

(4) An advisory committee is established to assist the small forest landowner office in developing policy and recommending rules to the forest practices board. The advisory committee shall consist of seven members, including a representative from the department of ecology, the department of fish and wildlife, and a tribal representative. Four additional committee members shall be small forest landowners who shall be appointed by the commissioner of public lands from a list of candidates submitted by the board of directors of the Washington farm forestry association or its successor organization. The association shall submit more than one candidate for each position. Appointees shall serve for a term of four years. The small forest landowner office shall review draft rules or rule concepts with the committee prior to recommending such rules to the forest practices board. The office shall reimburse nongovernmental committee members for reasonable expenses associated with attending committee meetings as provided in RCW 43.03.050 and 43.03.060.

(5) By December 1, 2000, the small forest landowner office shall provide a report to the board and the legislature containing:

(a) Estimates of the amounts of nonindustrial forests and woodlands in holdings of twenty acres or less, twenty-one to one hundred acres, one hundred to one thousand acres, and one thousand to five thousand acres, in western Washington and eastern Washington, and the number of persons having total nonindustrial forest and woodland holdings in those size ranges;

(b) Estimates of the number of parcels of nonindustrial forests and woodlands held in contiguous ownerships of twenty acres or less, and the percentages of those parcels containing improvements used: (i) As primary residences for half or more of most years; (ii) as vacation homes or other temporary residences for less than half of most years; and (iii) for other uses;

(c) The watershed administrative units in which significant portions of the riparian areas or total land area are nonindustrial forests and woodlands;

(d) Estimates of the number of forest practices applications and notifications filed per year for forest road construction, silvicultural activities to enhance timber growth, timber harvest not associated with conversion to nonforest land uses, with estimates of the number of acres of nonindustrial forests and woodlands on which forest practices are conducted under those applications and notifications; and

(e) Recommendations on ways the board and the legislature could provide more effective incentives to encourage continued management of nonindustrial

forests and woodlands for forestry uses in ways that better protect salmon, other fish and wildlife, water quality, and other environmental values.

(6) By December 1, 2002, and every four years thereafter, the small forest landowner office shall provide to the board and the legislature an update of the report described in subsection (5) of this section, containing more recent information and describing:

(a) Trends in the items estimated under subsection (5)(a) through (d) of this section;

(b) Whether, how, and to what extent the forest practices act and rules contributed to those trends; and

(c) Whether, how, and to what extent: (i) The board and legislature implemented recommendations made in the previous report; and (ii) implementation of or failure to implement those recommendations affected those trends.

EXPLANATORY NOTE

Corrects the reference to the small forest landowner office.

Sec. 13. RCW 76.13.120 and 1999 1st sp.s. c 4 s 504 are each amended to read as follows:

(1) The legislature finds that the state should acquire easements along riparian and other sensitive aquatic areas from small forest landowners willing to sell or donate such easements to the state provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The legislature therefore establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100 and 76.13.110 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.

(b) "Qualifying timber" means those trees covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that is made uneconomic to harvest by those rules, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board.

(c) "Small forest landowner" means a landowner meeting all of the following characteristics: (i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is submitted; (ii) an entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small timber harvester under RCW 84.33.073(1); and (iii) an entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.073(1) during the ten years

following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.073(1), or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department of natural resources' reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner.

For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition as of the date that the forest practices application is submitted with which the forestry riparian easement is associated. A small forest landowner can include an individual, partnership, corporate, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section.

(d) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department of natural resources is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with subsections (6) and (7) of this section. The department of natural resources may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date the forest practices application associated with the qualifying timber is submitted to the department of natural resources, unless the easement is terminated earlier by the department of natural resources voluntarily, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) Upon application of a small forest landowner for a riparian easement that is associated with a forest practices application and the landowner's marking of the qualifying timber on the qualifying lands, the small forest landowner office shall determine the compensation to be offered to the small (~~forest~~) forest landowner

as provided for in this section. The legislature recognizes that there is not readily available market transaction evidence of value for easements of this nature, and thus establishes the following methodology to ascertain the value for forestry riparian easements. Values so determined shall not be considered competent evidence of value for any other purpose.

The small forest landowner office shall establish the volume of the qualifying timber. Based on that volume and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the forest practices application associated with the qualifying timber was submitted. If, under the forest practices rules adopted under chapter 4, Laws of 1999 1st sp. sess., some qualifying timber may be removed prior to the expiration of the fifty-year term of the easement, the small forest landowner office shall apply a reduced compensation factor to ascertain the value of those trees based on the proportional economic value, considering income and growth, lost to the landowner.

(7) Except as provided in subsection (8) of this section, the small forest landowner office shall, subject to available funding, offer compensation to the small forest landowner in the amount of fifty percent of the value determined in subsection (6) of this section. If the landowner accepts the offer, the department of natural resources shall pay the compensation promptly upon (a) completion of harvest in the area covered by the forestry riparian easement; (b) verification that there has been compliance with the rules requiring leave trees in the easement area; and (c) execution and delivery of the easement to the department of natural resources. Upon donation or payment of compensation, the department of natural resources may record the easement.

(8) For approved forest (~~practices~~) practices applications where the regulatory impact is greater than the average percentage impact for all small landowners as determined by the department of natural resources analysis under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes trees left in buffers, special management zones, and those rendered uneconomic to harvest by these rules. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

(9) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

- (a) A standard version or versions of all documents necessary or advisable to create the forestry riparian easements as provided for in this section;
- (b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department of natural resources shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department of natural resources, small forest landowners, and the small forest landowner office;

(d) A method to determine that a forest (~~((practice[s]))~~) practices application involves a commercially reasonable harvest;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department of natural resources' and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370; and

(i) A method for internal department of natural resources review of small (~~((forest))~~) forest landowner office compensation decisions under subsection (7) of this section.

EXPLANATORY NOTE

Clarifies a reference to the small forest landowner.

Also corrects references to forest practices applications and the small forest landowner office.

Sec. 14. RCW 76.14.010 and 1988 c 128 s 37 are each amended to read as follows:

As used in this chapter:

(1) "Department" means the department of natural resources;

(2) "Forest land" means any lands considered best adapted for the growing of trees; and

(3) The term "owner" means and includes individuals, partnerships, corporations, associations, federal land managing agencies, state of Washington, counties, municipalities, and other forest landowners(~~(;~~
~~—"Forest land" means any lands considered best adapted for the growing of trees)).~~

EXPLANATORY NOTE

Arranges definitions in alphabetical order.

Sec. 15. RCW 76.15.010 and 1991 c 179 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) ("Department" means the department of natural resources;~~
~~(2) "Person" means an individual, partnership, private or public municipal corporation, Indian tribe, state entity, county or local governmental entity, or association of individuals of whatever nature.~~
~~(3)) "Community and urban forest" is that land in and around human settlements ranging from small communities to metropolitan areas, occupied or potentially occupied by trees and associated vegetation. Community and urban forest land may be planted or unplanted, used or unused, and includes public and private lands, lands along transportation and utility corridors, and forested watershed lands within populated areas.~~

~~((4)) (2) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.~~

~~((5)) (3) "Department" means the department of natural resources.~~

~~(4) "Municipality" means a city, town, port district, public school district, community college district, irrigation district, weed control district, park district, or other political subdivision of the state.~~

~~(5) "Person" means an individual, partnership, private or public municipal corporation, Indian tribe, state entity, county or local governmental entity, or association of individuals of whatever nature.~~

EXPLANATORY NOTE

Arranges definitions in alphabetical order.

Sec. 16. RCW 76.36.010 and 1984 c 60 s 1 are each amended to read as follows:

The words and phrases herein used, unless the same be clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

~~(1) ("Person" includes the plural and all corporations, foreign and domestic, copartnerships, firms and associations of persons;~~

~~(2) "Waters of this state" includes any and all bodies of fresh and salt water within the jurisdiction of the state capable of being used for the transportation or storage of forest products, including all rivers and lakes and their tributaries, harbors, bays, bayous and marshes;~~

~~(3) "Forest products" means logs, spars, piles, and poles, boom sticks and shingle bolts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a sawmill, shingle mill or tie mill, or cut into cord wood, stove wood or hewn ties;~~

~~(4) "Brand" means a unique symbol or mark placed on or in forest products for the purpose of identifying ownership;~~

~~—(5) "Catch brand" means a mark or brand used by a person as an identifying mark placed upon forest products and booming equipment previously owned by another.~~

~~—(6)) "Booming equipment" includes boom sticks and boom chains.~~

~~((7)) (2) "Brand" means a unique symbol or mark placed on or in forest products for the purpose of identifying ownership.~~

~~(3) "Catch brand" means a mark or brand used by a person as an identifying mark placed upon forest products and booming equipment previously owned by another.~~

~~(4) "Department" means the department of natural resources.~~

~~(5) "Forest products" means logs, spars, piles, and poles, boom sticks, and shingle bolts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a sawmill, shingle mill, or tie mill, or cut into cord wood, stove wood, or hewn ties.~~

~~(6) "Person" includes the plural and all corporations, foreign and domestic, copartnerships, firms, and associations of persons.~~

~~(7) "Waters of this state" includes any and all bodies of fresh and salt water within the jurisdiction of the state capable of being used for the transportation or storage of forest products, including all rivers and lakes and their tributaries, harbors, bays, bayous, and marshes.~~

EXPLANATORY NOTE

Arranges definitions in alphabetical order.

Sec. 17. RCW 76.42.020 and 1994 c 163 s 2 are each amended to read as follows:

~~(("Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or tidal and shorelands and which is not merchantable or economically salvageable under chapter 76.40 RCW.))~~

~~(1) "Removal" as used in this chapter shall include all activities necessary for the collection and disposal of such wood debris: PROVIDED, That nothing herein provided shall permit removal of wood debris from private property without written consent of the owner.~~

~~(2) "Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or tidal and shorelands.~~

EXPLANATORY NOTE

(1) Chapter 76.40 RCW was repealed by 1994 c 163 s 6.

(2) Numbers definitions and arranges them in alphabetical order.

Sec. 18. RCW 76.48.020 and 1995 c 366 s 1 are each amended to read as follows:

Unless otherwise required by the context, as used in this chapter:

~~(1) ("Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.~~

~~— (2) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.~~

~~— (3) "Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (Cytisus scoparius) and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones or seeds.))~~
"Authorization" means a properly completed preprinted form authorizing the transportation or possession of Christmas trees which contains the information required by RCW 76.48.080, a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.

(2) "Cascara bark" means the bark of a Cascara tree.

(3) "Cedar processor" means any person who purchases, takes, or retains possession of cedar products or cedar salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(4) "Cedar products" means cedar shakeboards, shake and shingle bolts, and rounds one to three feet in length.

(5) "Cedar salvage" means cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

~~(6) ("Processed cedar products" means cedar shakes, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds less than one foot in length.~~

~~— (7) "Cedar processor" means any person who purchases, takes, or retains possession of cedar products or cedar salvage for later sale in the same or modified form following removal and delivery from the land where harvested.~~

~~— (8) "Cascara bark" means the bark of a Cascara tree.~~

~~— (9) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means.~~

~~— (10) "Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, wild edible mushrooms, and Cascara bark.~~

~~— (11) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.~~

~~— (12))~~ "Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(7) "Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (Cytisus scoparius), and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones or seeds.

(8) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with the land or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land.

~~((13) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means:~~

~~—(14) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.~~

~~—(15) "Authorization" means a properly completed preprinted form authorizing the transportation or possession of Christmas trees which contains the information required by RCW 76.48.080, a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.~~

~~—(16)) (9) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.~~

~~((17) "Specialized forest products permit" means a printed document in a form specified by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as "permitters" and validated by the county sheriff and authorizes a designated person, referred to in this chapter as "permittee", who has also signed the permit, to harvest and transport a designated specialized forest product from land owned or controlled and specified by the permittor and that is located in the county where the permit is issued.~~

~~—(18)) (10) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.~~

(11) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(12) "Permit area" means a designated tract of land that may contain single or multiple harvest sites.

(13) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(14) "Processed cedar products" means cedar shakes, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds less than one foot in length.

(15) "Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy sheriff, or an authorized employee of the sheriff's office or an agent of the office.

(16) "Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, wild edible mushrooms, and Cascara bark.

(17) "Specialized forest products permit" means a printed document in a form specified by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as "permitters" and validated by the county sheriff and authorizes a designated person, referred to in this chapter as "permittee," who has also signed the permit, to harvest and transport a designated specialized forest product from land owned or controlled and specified by the permitter and that is located in the county where the permit is issued.

(18) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(19) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permitter signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and permitter specify an earlier date. A permitter may require the actual signatures of both the permittee and permitter for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permitter, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof.

(20) ("Permit area" means a designated tract of land that may contain single or multiple harvest sites.) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means.

EXPLANATORY NOTE

Arranges definitions in alphabetical order.

Sec. 19. RCW 76.48.085 and 1995 c 366 s 14 are each amended to read as follows:

Buyers who purchase specialized forest products are required to record (1) the permit number; (2) the type of forest product purchased; (3) the permit holder's name; and (4) the amount of forest product purchased. The buyer shall keep a record of this information for a period of one year from the date of purchase and make the records available for inspection by authorized enforcement officials.

The buyer of specialized forest products must record the license plate number of the vehicle transporting the forest products on the bill of sale, as well as the seller's permit number on the bill of sale. This section shall not apply to transactions involving Christmas trees.

~~((The {This}))~~ This section shall not apply to buyers of specialized forest products at the retail sales level.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 20. RCW 78.16.070 and 1945 c 93 s 5 are each amended to read as follows:

In the event said lease shall be for reserved mineral rights on lands previously sold by said county with mineral rights reserved, as provided in ~~((chapter 19, Laws of 1943 [RCW 36.34.010]))~~ RCW 36.34.010, said lease shall contain a provision that no rights shall be exercised under said lease by the lessee, his or her heirs, executors, administrators, successors, or assigns, until provision has been made by the lessee, his or her heirs, executors, administrators, successors, or assigns to pay to the owner of the land upon which the rights reserved to the county are sought to be ~~((exercise [exercised]))~~ exercised, full payment for all damages to said owner by reason of entering upon said land; said rights to be determined as provided for in ~~((said chapter 19, Laws of Washington, 1943 [RCW 36.34.010]))~~ RCW 36.34.010: PROVIDED, HOWEVER, That in the event of litigation to determine such damage, the primary term of such lease shall be extended for a period equal to the time required for such litigation, but not to exceed three years.

EXPLANATORY NOTE

Corrects the reference to RCW 36.34.010, corrects a manifest grammatical error, and makes the section gender neutral.

Sec. 21. RCW 78.44.020 and 1993 c 518 s 3 are each amended to read as follows:

The purposes of this chapter are to:

(1) Provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and reclamation at the earliest opportunity following completion of surface mining;

(2) Provide for the greatest practical degree of state-wide consistency in the regulation of surface mines;

(3) Apportion regulatory authority between state and local governments in order to minimize redundant regulation of mining; and

(4) Ensure that reclamation is consistent with local land use plans~~((; and~~

~~((5) Ensure the power of local government to regulate land use and operations pursuant to section 16 of this act)).~~

EXPLANATORY NOTE

1993 c 518 s 16 was vetoed by the governor.

Sec. 22. RCW 78.44.031 and 1999 c 252 s 1 are each amended to read as follows:

Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Approved subsequent use" means the post surface-mining land use contained in an approved reclamation plan and approved by the local land use authority.

(2) "Completion of surface mining" means the cessation of mining and directly related activities in any segment of a surface mine that occurs when essentially all minerals that can be taken under the terms of the reclamation permit have been depleted except minerals required to accomplish reclamation according to the approved reclamation plan.

(3) "Department" means the department of natural resources.

(4) "Determination" means any action by the department including permit issuance, reporting, reclamation plan approval or modification, permit transfers, orders, fines, or refusal to issue permits.

(5) "Disturbed area" means any place where activities clearly in preparation for, or during, surface mining have physically disrupted, covered, compacted, moved, or otherwise altered the characteristics of soil, bedrock, vegetation, or topography that existed prior to such activity. Disturbed areas may include but are not limited to: Working faces, water bodies created by mine-related excavation, pit floors, the land beneath processing plant and stock pile sites, spoil pile sites, and equipment staging areas. Disturbed areas shall also include aboveground waste rock sites and tailing facilities, and other surface manifestations of underground mines.

Disturbed areas do not include:

(a) Surface mine access roads unless these have characteristics of topography, drainage, slope stability, or ownership that, in the opinion of the department, make reclamation necessary;

(b) Lands that have been reclaimed to all standards outlined in this chapter, rules of the department, any applicable SEPA document, and the approved reclamation plan; and

(c) Subsurface aspects of underground mines, such as portals, tunnels, shafts, pillars, and stopes.

(6) "Miner" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, including every public or governmental agency engaged in surface mining.

(7) "Minerals" means clay, coal, gravel, industrial minerals, metallic substances, peat, sand, stone, topsoil, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction use.

(8) "Operations" means all mine-related activities, exclusive of reclamation, that include, but are not limited to activities that affect noise generation, air quality,

surface and ground water quality, quantity, and flow, glare, pollution, traffic safety, ground vibrations, and/or significant or substantial impacts commonly regulated under provisions of land use or other permits of local government and local ordinances, or other state laws.

Operations specifically include:

(a) The mining or extraction of rock, stone, gravel, sand, earth, and other minerals;

(b) Blasting, equipment maintenance, sorting, crushing, and loading;

(c) On-site mineral processing including asphalt or concrete batching, concrete recycling, and other aggregate recycling;

(d) Transporting minerals to and from the mine, on site road maintenance, road maintenance for roads used extensively for surface mining activities, traffic safety, and traffic control.

(9) "Overburden" means the earth, rock, soil, and topsoil that lie above mineral deposits.

(10) "Permit holder" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including every public or governmental agency engaged in surface mining and/or the operation of surface mines, whether individually, jointly, or through subsidiaries, agents, employees, operators, or contractors who holds a state reclamation permit.

(11) "Reclamation" means rehabilitation for the appropriate future use of disturbed areas resulting from surface mining including areas under associated mineral processing equipment, areas under stockpiled materials, and aboveground waste rock and tailing facilities, and all other surface disturbances associated with underground mines. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific surface mine, the basic objective shall be to reestablish on a perpetual basis the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent use of the surface mine and to prevent or mitigate future environmental degradation.

(12) "Reclamation setbacks" include those lands along the margins of surface mines wherein minerals and overburden shall be preserved in sufficient volumes to accomplish reclamation according to the approved plan and the minimum reclamation standards. Maintenance of reclamation setbacks may not preclude other mine-related activities within the reclamation setback.

(13) "Recycling" means the reuse of minerals or rock products.

(14) "Screening" consists of vegetation, berms or other topography, fencing, and/or other screens that may be required to mitigate impacts of surface mining on adjacent properties and/or the environment.

(15) "Segment" means any portion of the surface mine that, in the opinion of the department:

(a) Has characteristics of topography, drainage, slope stability, ownership, mining development, or mineral distribution, that make reclamation necessary;

(b) Is not in use as part of surface mining and/or related activities; and

(c) Is larger than seven acres and has more than five hundred linear feet of working face except as provided in a segmental reclamation agreement approved by the department.

(16) "SEPA" means the state environmental policy act, chapter 43.21C RCW and rules adopted thereunder.

(17)(a) "Surface mine" means any area or areas in close proximity to each other, as determined by the department, where extraction of minerals results in:

(i) More than three acres of disturbed area;

(ii) Surface mined slopes greater than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot vertical; or

(iii) More than one acre of disturbed area within an eight acre area, when the disturbed area results from mineral prospecting or exploration activities.

(b) Surface mines include areas where mineral extraction from the surface or subsurface occurs by the auger method or by reworking mine refuse or tailings, when the disturbed area exceeds the size or height thresholds listed in (a) of this subsection.

(c) Surface mining occurs when operations have created or are intended to create a surface mine as defined by this subsection.

(d) Surface mining shall exclude excavations or grading used:

(i) Primarily for on-site construction, on-site road maintenance, or on-site landfill construction;

(ii) For the purpose of public safety or restoring the land following a natural disaster;

(iii) For the purpose of removing stockpiles;

(iv) For forest or farm road construction or maintenance on site or on contiguous lands;

(v) Primarily for public works projects if the mines are owned or primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area; and

(vi) For sand authorized by RCW (~~43.51.685~~) 79A.05.630.

(18) "Topsoil" means the naturally occurring upper part of a soil profile, including the soil horizon that is rich in humus and capable of supporting vegetation together with other sediments within four vertical feet of the ground surface.

EXPLANATORY NOTE

RCW 43.51.685 was recodified as RCW 79A.05.630 pursuant to 1999 c 249 s 1601.

Sec. 23. RCW 79.08.275 and 1996 c 129 s 8 are each amended to read as follows:

Except as provided in RCW (~~43.51.1121 and 43.51.113~~) 79A.05.120 and 79A.05.125, the portion of the Milwaukee Road corridor from the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., to the Idaho border purchased by the state shall be under the management and control of the department of natural resources.

EXPLANATORY NOTE

RCW 43.51.1121 and 43.51.113 were recodified as RCW 79A.05.120 and 79A.05.125, respectively, pursuant to 1999 c 249 s 1601.

Sec. 24. RCW 79.24.570 and 1969 ex.s. c 273 s 11 are each amended to read as follows:

All moneys received by the department of general administration from the management of the east capitol site, excepting (1) funds otherwise dedicated prior to April 28, 1967, (2) parking and rental charges and fines which are required to be deposited in other accounts, and (3) reimbursements of service and other utility charges made to the department of general administration, shall be deposited in the capitol purchase and development account of the state general fund (~~(or, in the event that revenue bonds are issued as authorized by RCW 79.24.630 through 79.24.647, into the state building bond redemption fund pursuant to RCW 79.24.638)~~).

EXPLANATORY NOTE

RCW 79.24.630 through 79.24.647 were repealed by 1994 c 219 s 21.

Sec. 25. RCW 79.71.090 and 1991 sp.s. c 13 s 118 are each amended to read as follows:

There is hereby created the natural resources conservation areas stewardship account in the state treasury to ensure proper and continuing management of land acquired or designated pursuant to this chapter. Funds for the stewardship account shall be derived from appropriations of state general funds, federal funds, grants, donations, gifts, bond issue receipts, securities, and other monetary instruments of value. Income derived from the management of natural resources conservation areas shall also be deposited in this stewardship account.

Appropriations from this account to the department shall be expended for no other purpose than the following: (1) To manage the areas approved by the legislature in fulfilling the purposes of this chapter; (2) to manage property acquired as natural area preserves under chapter 79.70 RCW; (3) to manage property transferred under the authority and appropriation provided by the legislature to be managed under chapter 79.70 RCW or this chapter or acquired under chapter (~~43.98A~~) 79A.15 RCW; and (4) to pay for operating expenses for the natural heritage program under chapter 79.70 RCW.

EXPLANATORY NOTE

Chapter 43.98A RCW was recodified as chapter 79A.15 RCW pursuant to 1999 c 249 s 1601.

Sec. 26. RCW 79.71.100 and 1987 c 472 s 10 are each amended to read as follows:

The legislature hereby designates certain areas as natural resources conservation areas:

(1) The Mt. Si conservation area (King County), RCW ~~((43.51.940))~~ 79A.05.725, is hereby designated the Mt. Si natural resources conservation area. The department is directed to continue its management of this area and to develop a plan for its continued conservation and use by the public. In accordance with Article XVI of the Washington state Constitution, any available private lands and trust lands located within the designated boundaries of the Mt. Si conservation area shall be leased or acquired in fee from the appropriate trust at fair market value using funds appropriated for that purpose.

(2) Trust lands and state-owned land on Cypress Island (Skagit County) are hereby designated as the Cypress Island natural resources conservation area. Any available private lands necessary to achieve the purposes of this section shall be acquired by the department of natural resources using funds appropriated for that purpose. Trust lands located within the designated boundaries of the Cypress Island natural resources conservation area shall be leased or acquired in fee from the appropriate trust at fair market value.

(3) Woodard Bay (Thurston County) is hereby designated the Woodard Bay natural resources conservation area. The department is directed to acquire property available in Sec. 18, T.19N, R1W using funds appropriated for that purpose.

(4) The area adjacent to the Dishman Hills natural area (Spokane County) is hereby designated the Dishman Hills natural resources conservation area. The department is directed to acquire property available in Sec. 19, 29 and 30, T.25N, R44E, using funds appropriated for that purpose.

EXPLANATORY NOTE

RCW 43.51.940 was recodified as RCW 79A.05.725 pursuant to 1999 c 249 s 1601.

Sec. 27. RCW 79.92.070 and 1982 1st ex.s. c 21 s 75 are each amended to read as follows:

If the owner of any harbor area lease upon tidal waters shall desire to construct thereon any wharf, dock, or other convenience of navigation or commerce, or to extend, enlarge, or substantially improve any existing structure used in connection with such harbor area, and shall deem the required expenditure not warranted by his or her right to occupy such harbor area during the remainder of the term of his or her lease, ~~((he))~~ the lease owner may make application to the department of natural resources for a new lease of such harbor area for a period not exceeding thirty years. Upon the filing of such application accompanied by such proper plans, drawings or other data, the department shall forthwith investigate the same and if it shall determine that the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for such new lease, such rate of rental shall be

a fixed percentage, during the term of such lease, on the true and fair value in money of such harbor area determined from time to time by the department ((as provided in RCW 79.92.050)). The department may propose modifications of the proposed wharf, dock, or other convenience or extensions, enlargements, or improvements thereon. The department shall, within ninety days from the filing of such application notify the applicant in writing of the terms and conditions upon which such new lease will be granted, and of the rental to be paid, and if the applicant shall within ninety days thereafter elect to accept a new lease of such harbor area upon the terms and conditions, and at the rental prescribed by the department, the department shall make a new lease for such harbor area for the term applied for and the existing lease shall thereupon be surrendered and canceled.

EXPLANATORY NOTE

RCW 79.92.050 was repealed by 1984 c 221 s 30, effective October 1, 1984.

Makes the section gender neutral.

Sec. 28. RCW 79.92.080 and 1982 1st ex.s. c 21 s 76 are each amended to read as follows:

Upon the expiration of any harbor area lease upon tidal waters hereafter expiring, the owner thereof may apply for a re-lease of such harbor area for a period not exceeding thirty years. Such application shall be accompanied with maps showing the existing improvements upon such harbor area and the tidelands adjacent thereto and with proper plans, drawings, and other data showing any proposed extensions or improvements of existing structures. Upon the filing of such application the department of natural resources shall forthwith investigate the same and if it shall determine that the character of the wharves, docks or other conveniences of commerce and navigation are reasonably adequate for the public needs and in the public interest, it shall by order fix and determine the terms and conditions upon which such re-lease shall be granted and the rate of rental to be paid, which rate shall be a fixed percentage during the term of such lease on the true and fair value in money of such harbor area as determined from time to time by the department of natural resources ((in accordance with RCW 79.92.050)).

EXPLANATORY NOTE

RCW 79.92.050 was repealed by 1984 c 221 s 30, effective October 1, 1984.

Sec. 29. RCW 79.94.070 and 1982 1st ex.s. c 21 s 92 are each amended to read as follows:

Upon platting and appraisal of tidelands or shorelands of the first class as in this chapter provided, if the department of natural resources shall deem it for the best public interest to offer said tide or shore lands of the first class for lease, the department shall cause a notice to be served upon the owner of record of uplands fronting upon the tide or shore lands to be offered for lease if he or she be a

resident of the state, or if he or she be a nonresident of the state, shall mail to his or her last known post office address, as reflected in the county records, a copy of the notice notifying him or her that the state is offering such tide or shore lands for lease, giving a description of those lands and the department's appraised fair market value of such tide or shore lands for lease, and notifying such owner that he or she has a preference right to apply to lease said tide or shore lands at the appraised value for the lease thereof for a period of sixty days from the date of service of mailing of said notice. If at the expiration of sixty days from the service or mailing of the notice, as above provided, there being no conflicting applications filed, and the owner of the uplands fronting upon the tide or shore lands offered for lease, has failed to avail himself or herself of his or her preference right to apply to lease or to pay to the department the appraised value for lease of the tide or shore lands described in said notice, then in that event, said tide or shore lands may be offered for lease to any person and may be leased in the manner provided for in the case of lease of state lands.

If at the expiration of sixty days two or more claimants asserting a preference right to lease shall have filed applications to lease any tract, conflicting with each other, the conflict between the claimants shall be equitably resolved by the department of natural ~~((resources))~~ resources as the best interests of the state require in accord with the procedures prescribed by chapter 34.05 RCW: PROVIDED, That any contract purchaser of lands or rights therein, which upland qualifies the owner for a preference right under this section, shall have first priority for such preference right.

EXPLANATORY NOTE

Corrects the reference to the department of natural resources.
Makes the section gender neutral.

Sec. 30. RCW 79.96.110 and 1994 c 264 s 72 are each amended to read as follows:

In case the director of fish and wildlife approves the vacation of the whole or any part of said reserve, the department of natural resources may vacate and offer for lease such parts or all of said reserve as it deems to be for the best interest of the state, and all moneys received for the lease of such lands shall be paid to the department of natural resources ~~((in accordance with RCW 79.94.190))~~: PROVIDED, That nothing in RCW 79.96.090 through 79.96.110 shall be construed as authorizing the lease of any tidelands which have heretofore, or which may hereafter, be set aside as state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties: PROVIDED FURTHER, That any portion of Plat 138, Clifton's Oyster Reserve, which has already been vacated, may be leased by the department.

EXPLANATORY NOTE

RCW 79.94.190 was repealed by 1984 c 221 s 30, effective October 1, 1984.

Sec. 31. RCW 79A.05.155 and 1982 c 156 s 4 are each amended to read as follows:

If the commission determines it necessary, the applicant shall execute and file with the secretary of state a bond payable to the state, in such penal sum as the commission shall require, with good and sufficient sureties to be approved by the commission, conditioned that the grantee of the permit will make the improvement in accordance with the plans and specifications contained in the permit, and, in case the improvement is made upon lands withdrawn from sale under the provisions of RCW ~~((43.51.100))~~ 79A.05.105, will pay into the state treasury to the credit of the fund to which the proceeds of the sale of such lands would belong, the appraised value of all merchantable timber and material on the land, destroyed, or used in making such improvement.

EXPLANATORY NOTE

RCW 43.51.100 was recodified as RCW 79A.05.105 pursuant to 1999 c 249 s 1601.

Sec. 32. RCW 79A.05.200 and 1967 ex.s. c 96 s 1 are each amended to read as follows:

The powers, functions, and duties heretofore exercised by the department of ~~((fisheries))~~ fish and wildlife, or its director, respecting the management, control, and operation of the following enumerated tidelands, which are presently suitable for public recreational use, are hereby transferred to the parks and recreation commission which shall also have respecting such tidelands all the powers conferred by this chapter ~~((43.51-RCW))~~, as now or hereafter amended, respecting parks and parkways:

Parcel No. 1. (Toandos Peninsula) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 2. (Shine) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains thereof as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right of way for county road granted to Jefferson county December 8, 1941 under application No. 1731, records of department of public lands.

Parcel No. 3. (Mud Bay - Lopez Island) The tidelands of the second class, owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any tideland of the second class in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909 pursuant to the provisions

of chapter 24, Laws of 1895 under application No. 4985, records of department of public lands.

Parcel No. 4. (Spencer Spit) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less.

Parcel No. 5. (Lilliwaup) The tidelands of the second class, owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No. 133 produced southerly and situate in front of, adjacent to or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or less.

EXPLANATORY NOTE

(1) Powers, duties, and functions of the department of fisheries and the department of wildlife were transferred to the department of fish and wildlife by 1993 sp.s. c 2, effective July 1, 1994.

(2) Chapter 43.51 RCW was repealed and/or recodified in its entirety pursuant to 1999 c 249. The remaining sections were recodified in chapter 79A.05 RCW.

Sec. 33. RCW 79A.05.205 and 1967 ex.s. c 96 s 2 are each amended to read as follows:

The state parks and recreation commission may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands described in RCW (~~43.51.240~~) 79A.05.200.

EXPLANATORY NOTE

RCW 43.51.240 was recodified as RCW 79A.05.200 pursuant to 1999 c 249 s 1601.

Sec. 34. RCW 79A.05.250 and 1982 c 11 s 5 are each amended to read as follows:

The commission may adopt such rules as are necessary to implement and enforce RCW (~~43.51.290 through 43.51.320~~) 79A.05.225 through 79A.05.240 and 46.61.585 after consultation with the winter recreation advisory committee.

EXPLANATORY NOTE

RCW 43.51.290 through 43.51.320 were recodified as RCW 79A.05.225 through 79A.05.240 pursuant to 1999 c 249 s 1601.

Sec. 35. RCW 79A.05.255 and 1994 c 264 s 19 are each amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One representative of the department of natural resources, one representative of the department of fish and wildlife, and one representative of the Washington state association of counties, each of whom shall be appointed by the director of the particular department or association.

(3) The terms of the members appointed under subsection (2) (a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW ~~((43.51.310))~~ 79A.05.235 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chairman or by majority vote of the committee. The chairman of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

(7) The winter recreation advisory committee and its powers and duties shall terminate on June 30, 2001.

EXPLANATORY NOTE

RCW 43.51.310 was recodified as RCW 79A.05.235 pursuant to 1999 c 249 s 1601.

Sec. 36. RCW 79A.05.265 and 1977 ex.s. c 281 s 1 are each amended to read as follows:

The legislature finds that there is a need for hostels in the state for the safety and welfare of transient persons with limited resources. It is the intent of RCW ~~((43.51.360 through 43.51.370))~~ 79A.05.265 through 79A.05.275 that such facilities be established using locally donated structures. It is the further intent of RCW ~~((43.51.360 through 43.51.370))~~ 79A.05.265 through 79A.05.275 that the state dispense any available federal or other moneys for such related projects and provide assistance where possible.

EXPLANATORY NOTE

RCW 43.51.360 through 43.51.370 were recodified as RCW 79A.05.265 through 79A.05.275 pursuant to 1999 c 249 s 1601.

Sec. 37. RCW 79A.05.300 and 1980 c 89 s 4 are each amended to read as follows:

For the reasons specified in RCW ((~~43.51.380~~) 79A.25.250), the state parks and recreation commission shall place a high priority on the establishment of urban area state parks and shall revise its plan for future state parks to achieve this priority. This section shall be implemented by January 1, 1981

EXPLANATORY NOTE

RCW 43.51.380 was recodified as RCW 79A.25.250 pursuant to 1999 c 249 s 1601.

Sec. 38. RCW 79A.05.315 and 1996 c 129 s 7 are each amended to read as follows:

Except as provided in RCW ((~~43.51.1121 and 43.51.113~~) 79A.05.120 and 79A.05.125), management control of the portion of the Milwaukee Road corridor, beginning at the western terminus near Easton and concluding at the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., inclusive of the northerly spur line therefrom, shall be transferred by the department of natural resources to the state parks and recreation commission at no cost to the commission.

EXPLANATORY NOTE

RCW 43.51.1121 and 43.51.113 were recodified as RCW 79A.05.120 and 79A.05.125 pursuant to 1999 c 249 s 1601.

Sec. 39. RCW 79A.05.320 and 1987 c 438 s 39 are each amended to read as follows:

The state parks and recreation commission shall do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Manage the corridor as a recreational trail except when closed under RCW ((~~43.51.409~~) 79A.05.325);

(2) Close the corridor to hunting;

(3) Close the corridor to all motorized vehicles except: (a) Emergency or law enforcement vehicles; (b) vehicles necessary for access to utility lines; and (c) vehicles necessary for maintenance of the corridor, or construction of the trail;

(4) Comply with legally enforceable conditions contained in the deeds for the corridor;

(5) Control weeds under the applicable provisions of chapters 17.04, 17.06, and 17.10 RCW; and

(6) Clean and maintain culverts.

EXPLANATORY NOTE

RCW 43.51.409 was recodified as RCW 79A.05.325 pursuant to 1999 c 249 s 1601.

Sec. 40. RCW 79A.05.405 and 1993 c 182 s 6 are each amended to read as follows:

The water trail program account is created in the state treasury. All receipts from sales of materials pursuant to RCW (~~(43.51.442)~~) 79A.05.385, from state-wide water trail permit fees collected pursuant to RCW (~~(43.51.448)~~) 79A.05.400, and all monetary civil penalties collected pursuant to RCW (~~(43.51.454)~~) 79A.05.415 shall be deposited in the water trail program account. Any gifts, grants, donations, or moneys from any source received by the commission for the water trail program shall also be deposited in the water trail program account. Moneys in the account may be spent only after appropriation to the commission, and may be used solely for water trail program purposes, including: (1) Administration, acquisition, development, operation, planning, and maintenance of water trail lands and facilities, and grants or contracts therefor; and (2) the development and implementation of water trail informational, safety, enforcement, and education programs, and grants or contracts therefor.

EXPLANATORY NOTE

RCW 43.51.442, 43.52.448, and 43.51.454 were recodified as RCW 79A.05.385, 79A.05.400, and 79A.05.415, respectively, pursuant to 1999 c 249 s 1601.

Sec. 41. RCW 79A.05.420 and 1994 c 264 s 21 are each amended to read as follows:

(1) There is created a water trail advisory committee to advise the parks and recreation commission in the administration of RCW (~~(43.51.440 through 43.51.454)~~) 79A.05.380 through 79A.05.415 and to assist and advise the commission in the development of water trail facilities and programs.

(2) The advisory committee shall consist of twelve members, who shall be appointed as follows:

(a) Five public members representing recreational water trail users, to be appointed by the commission;

(b) Two public members representing commercial sectors with an interest in the water trail system, to be appointed by the commission;

(c) One representative each from the department of natural resources, the department of fish and wildlife, the Washington state association of counties, and the association of Washington cities, to be appointed by the director of the agency or association. The director of the Washington state parks and recreation commission or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

(3) Except as provided in this section, the terms of the public members appointed by the commission shall begin on January 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of an unexpired term. In making the initial appointments to the advisory committee, the commission shall appoint two public members to serve one year, two public members to serve for two years,

and three public members to serve for three years. Public members of the advisory committee may be reimbursed from the water trail program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The committee shall select a chair and adopt rules necessary to govern its proceedings. The committee shall meet at the times and places it determines, not less than twice a year, and additionally as required by the committee chair or by majority vote of the committee.

EXPLANATORY NOTE

RCW 43.51.440 through 43.51.454 were recodified as RCW 79A.05.380 through 79A.05.415 pursuant to 1999 c 249 s 1601.

Sec. 42. RCW 79A.05.500 and 1969 ex.s. c 96 s 1 are each amended to read as follows:

The purpose of RCW (~~43.51.500 through 43.51.570~~) 79A.05.500 through 79A.05.530 is to provide: (1) The opportunity for healthful employment of youths in programs of conservation, developing, improving, and maintaining natural and artificial recreational areas for the welfare of the general public; (2) the opportunity for our youths to learn vocational and work skills, develop good work habits and a sense of responsibility and contribution to society, improvement in personal physical and moral well being, and an understanding and appreciation of nature.

EXPLANATORY NOTE

RCW 43.51.500 through 43.51.570 were recodified as RCW 79A.05.500 through 79A.05.530 pursuant to 1999 c 249 s 1601, except for RCW 43.51.545 which was repealed by 1999 c 249 s 1701.

Sec. 43. RCW 79A.05.520 and 1965 c 8 s 43.51.550 are each amended to read as follows:

Existing provisions of law with respect to hours of work, rate of compensation, sick leave, vacation, civil service and unemployment compensation shall not be applicable to enrollees or temporary employees working under the provisions of RCW (~~43.51.500 through 43.51.570~~) 79A.05.500 through 79A.05.530.

EXPLANATORY NOTE

RCW 43.51.500 through 43.51.570 were recodified as RCW 79A.05.500 through 79A.05.530 pursuant to 1999 c 249 s 1601, except for RCW 43.51.545 which was repealed by 1999 c 249 s 1701.

Sec. 44. RCW 79A.05.535 and 1965 ex.s. c 48 s 1 are each amended to read as follows:

The state parks and recreation commission is authorized to enter into agreements with and accept grants from the federal government for the support of any program within the purposes of RCW (~~43.51.500 through 43.51.570~~) 79A.05.500 through 79A.05.530.

EXPLANATORY NOTE

RCW 43.51.500 through 43.51.570 were recodified as RCW 79A.05.500 through 79A.05.530 pursuant to 1999 c 249 s 1601, except for RCW 43.51.545 which was repealed by 1999 c 249 s 1701.

Sec. 45. RCW 79A.05.540 and 1965 ex.s. c 48 s 2 are each amended to read as follows:

Notwithstanding the provisions of RCW (~~43.51.530 and 43.51.540~~) 79A.05.510 and 79A.05.515, the commission may determine the length of enrollment and the compensation of enrollees in accordance with the standards of any federal act or regulation under which an agreement is made with, or a grant is received from the federal government pursuant to RCW (~~43.51.580~~) 79A.05.535.

EXPLANATORY NOTE

RCW 43.51.530, 43.51.540, and 43.51.580 were recodified as RCW 79A.05.510, 79A.05.515, and 79A.05.535, respectively, pursuant to 1999 c 249 s 1601.

Sec. 46. RCW 79A.05.610 and 1969 ex.s. c 55 s 2 are each amended to read as follows:

Except as otherwise provided in RCW (~~43.51.650 through 43.51.685~~) 79A.05.600 through 79A.05.630, the Washington State Seashore Conservation Area shall be under the jurisdiction of the Washington state parks and recreation commission, which shall administer RCW (~~43.51.650 through 43.51.685~~) 79A.05.600 through 79A.05.630 in accordance with the powers granted it herein and under the appropriate provisions of this chapter (~~43.51-RCW~~).

EXPLANATORY NOTE

(1) RCW 43.51.650 through 43.51.685 were recodified as RCW 79A.05.600 through 79A.05.630 pursuant to 1999 c 249 s 1601.

(2) Chapter 43.51 RCW was repealed and/or recodified in its entirety by 1999 c 249. The remaining sections were recodified in chapter 79A.05 RCW.

Sec. 47. RCW 79A.05.615 and 1969 ex.s. c 55 s 3 are each amended to read as follows:

The Washington state parks and recreation commission shall administer the Washington State Seashore Conservation Area in harmony with the broad principles set forth in RCW (~~43.51.650~~) 79A.05.600. Where feasible, the area shall be preserved in its present state; everywhere it shall be maintained in the best possible condition for public use. All forms of public outdoor recreation shall be permitted and encouraged in the area, unless specifically excluded or limited by the commission. While the primary purpose in the establishment of the area is to preserve the coastal beaches for public recreation, other uses shall be allowed as provided in RCW (~~43.51.650 through 43.51.685~~) 79A.05.600 through 79A.05.630, or when found not inconsistent with public recreational use by the Washington state parks and recreation commission.

EXPLANATORY NOTE

(1) RCW 43.51.650 was recodified as RCW 79A.05.600 pursuant to 1999 c 249 s 1601.

(2) RCW 43.51.650 through 43.51.685 were recodified as RCW 79A.05.600 through 79A.05.630 pursuant to 1999 c 249 s 1601.

Sec. 48. RCW 79A.05.620 and 1969 ex.s. c 55 s 4 are each amended to read as follows:

In administering the Washington State Seashore Conservation Area, the Washington state parks and recreation commission shall seek the cooperation and assistance of federal agencies, other state agencies, and local political subdivisions. All state agencies, and the governing officials of each local subdivision shall cooperate with the commission in carrying out its duties. Except as otherwise provided in RCW ~~((43.51.650 through 43.51.685))~~ 79A.05.600 through 79A.05.630, and notwithstanding any other provision of law, other state agencies and local subdivisions shall perform duties in the Washington State Seashore Conservation Area which are within their normal jurisdiction, except when such performance clearly conflicts with the purposes of RCW ~~((43.51.650 through 43.51.685))~~ 79A.05.600 through 79A.05.630.

EXPLANATORY NOTE

RCW 43.51.650 through 43.51.685 were recodified as RCW 79A.05.600 through 79A.05.630 pursuant to 1999 c 249 s 1601.

Sec. 49. RCW 79A.05.625 and 1994 c 264 s 22 are each amended to read as follows:

Nothing in RCW ~~((43.51.650 through 43.51.685))~~ 79A.05.600 through 79A.05.630 and ~~((43.51.695 through 43.51.765))~~ 79A.05.635 through 79A.05.695 shall be construed to interfere with the powers, duties and authority of the department of fish and wildlife to regulate the conservation or taking of food fish and shellfish. Nor shall anything in RCW ~~((43.51.650 through 43.51.685))~~ 79A.05.600 through 79A.05.630 and ~~((43.51.695 through 43.51.765))~~ 79A.05.635 through 79A.05.695 be construed to interfere with the powers, duties and authority of the department of fish and wildlife to regulate, manage, conserve, and provide for the harvest of wildlife within such area: PROVIDED, HOWEVER. That no hunting shall be permitted in any state park.

EXPLANATORY NOTE

RCW 43.51.650 through 43.51.685 and 43.51.695 through 43.51.765 were recodified as RCW 79A.05.600 through 79A.05.630 and 79A.05.635 through 79A.05.695 pursuant to 1999 c 249 s 1601.

Sec. 50. RCW 79A.05.630 and 1997 c 137 s 4 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))~~ 79A.05.175 and

79A.05.180, 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 state parks renewal and stewardship account.

EXPLANATORY NOTE

RCW 43.51.210 and 43.51.215 were recodified as RCW 79A.05.175 and 79A.05.180 pursuant to 1999 c 249 s 1601.

Sec. 51. RCW 79A.05.635 and 1988 c 75 s 1 are each amended to read as follows:

A cooperative program to provide recreation management plans for the ocean beaches that comprise the Seashore Conservation Area established by RCW ((43.51.655)) 79A.05.605 is created.

EXPLANATORY NOTE

RCW 43.51.655 was recodified as RCW 79A.05.605 pursuant to 1999 c 249 s 1601.

Sec. 52. RCW 79A.05.640 and 1988 c 75 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply to RCW ((43.51.650 through 43.51.685 and 43.51.695 through 43.51.765)) 79A.05.600 through 79A.05.695.

- (1) "Local government" means a county, city, or town.
- (2) "Ocean beaches" include the three ocean beaches described in RCW ((43.51.655)) 79A.05.605.
- (3) "Pedestrian use" means any use that does not involve a motorized vehicle.

EXPLANATORY NOTE

(1) RCW 43.51.650 through 43.51.685 and 43.51.695 through 43.51.765 were recodified as RCW 79A.05.600 through 79A.05.630 and 79A.05.635 through 79A.05.695 pursuant to 1999 c 249 s 1601. These citations have been combined to accurately reflect those sections that

relate to the Washington State Seashore Conservation Area, RCW 79A.05.600 through 79A.05.695.

(2) RCW 43.51.655 was recodified as RCW 79A.05.605 pursuant to 1999 c 249 s 1601.

Sec. 53. RCW 79A.05.645 and 1988 c 75 s 3 are each amended to read as follows:

Local governments having a portion of the Seashore Conservation Area within their boundaries may, individually or through an agreement with other local governments located on the same ocean beach, adopt a recreation management plan which meets the requirements of RCW ((~~43.51.650 through 43.51.685 and 43.51.695 through 43.51.765~~) 79A.05.600 through 79A.05.695) for that portion of the ocean beach. The legislature hereby encourages adoption of a single plan for each beach.

EXPLANATORY NOTE

RCW 43.51.650 through 43.51.685 and 43.51.695 through 43.51.765 were recodified as RCW 79A.05.600 through 79A.05.630 and 79A.05.635 through 79A.05.695 pursuant to 1999 c 249 s 1601. These citations have been combined to accurately reflect those sections that relate to the Washington State Seashore Conservation Area, RCW 79A.05.600 through 79A.05.695.

Sec. 54. RCW 79A.05.650 and 1988 c 75 s 4 are each amended to read as follows:

(1) Except as provided in RCW ((~~43.51.715 and 43.51.720~~) 79A.05.655 and 79A.05.660), a total of forty percent of the length of the beach subject to the recreation management plan shall be reserved for pedestrian use under this section and RCW ((~~43.51.725~~) 79A.05.665). Restrictions on motorized traffic under this section shall be from April 15th to the day following Labor day of each year. Local jurisdictions may adopt provisions within recreation management plans that exceed the requirements of this section. The commission shall not require that a plan designate for pedestrian use more than forty percent of the land subject to the plan.

(2) In designating areas to be reserved for pedestrian use, the plan shall consider the following:

- (a) Public safety;
- (b) State-wide interest in recreational use of the ocean beaches;
- (c) Protection of shorebird and marine mammal habitats;
- (d) Preservation of native beach vegetation;
- (e) Protection of sand dune topography;
- (f) Prudent management of clam beds;
- (g) Economic impacts to the local community; and
- (h) Public access and parking availability.

EXPLANATORY NOTE

RCW 43.51.715, 43.51.720, and 43.51.725 were recodified as RCW 79A.05.655, 79A.05.660, and 79A.05.665 pursuant to 1999 c 249 s 1601. Also puts the date reference in standard drafting style.

Sec. 55. RCW 79A.05.655 and 1988 c 75 s 5 are each amended to read as follows:

Notwithstanding RCW ~~((43.51.710(1)))~~ 79A.05.650(1), recreation management plans may make provision for vehicular traffic on areas otherwise reserved for pedestrian use in order to:

- (1) Facilitate clam digging;
- (2) Accommodate organized recreational events of not more than seven consecutive days duration;
- (3) Provide for removal of wood debris under RCW 4.24.210 and ~~((43.51.045(5)))~~ 79A.05.035(5); and
- (4) Accommodate removal of sand located upland from the Seashore Conservation Area or removal of sand within the Seashore Conservation Area under the terms of a covenant, easement, or deed.

EXPLANATORY NOTE

RCW 43.51.710 and 43.51.045 were recodified as RCW 79A.05.650 and 79A.05.035 pursuant to 1999 c 249 s 1601.

Sec. 56. RCW 79A.05.665 and 1988 c 75 s 7 are each amended to read as follows:

Recreation management plans shall, upon request of the commission, reserve on a permanent, seasonal, or temporary basis, land adjoining national wildlife refuges and state parks for pedestrian use. After a plan is approved, the commission may require local jurisdictions to adopt amendments to the plan governing driving on land adjoining wildlife refuges and state parks. Land reserved for pedestrian use under this section for at least the period from April 15th through the day following Labor Day of each year shall be included when determining compliance with the requirements of RCW ~~((43.51.710))~~ 79A.05.650.

EXPLANATORY NOTE

RCW 43.51.710 was recodified as RCW 79A.05.650 pursuant to 1999 c 249 s 1601.

Sec. 57. RCW 79A.05.685 and 1988 c 75 s 11 are each amended to read as follows:

Recreation management plans shall be adopted by each participating jurisdiction and submitted to the commission by September 1, 1989. The commission shall approve the proposed plan if, in the commission's judgment, the plan adequately fulfills the requirements of RCW ~~((43.51.650 through 43.51.685 and 43.51.695 through 43.51.765))~~ 79A.05.600 through 79A.05.695.

If the proposed plan is not approved, the commission shall suggest modifications to the participating local governments. Local governments shall have

ninety days after receiving the suggested modifications to resubmit a recreation management plan. Thereafter, if the commission finds that a plan does not adequately fulfill the requirements of RCW ~~((43.51.650 through 43.51.685 and 43.51.695 through 43.51.765))~~ 79A.05.600 through 79A.05.695, the commission may amend the proposal or adopt an alternative plan.

If a plan for all or any portion of the Seashore Conservation Area is not submitted in accordance with RCW ~~((43.51.695 through 43.51.765))~~ 79A.05.635 through 79A.05.695, the commission shall adopt a recreation management plan for that site.

Administrative rules adopted by the commission under RCW 43.51.680 shall remain in effect for all or any portion of each ocean beach until a recreation management plan for that site is adopted or approved by the commission.

The commission shall not adopt a recreation management plan for all or any portion of an ocean beach while appeal of a commission decision regarding that site is pending.

EXPLANATORY NOTE

RCW 43.51.650 through 43.51.685 and 43.51.695 through 43.51.765 were recodified as RCW 79A.05.600 through 79A.05.630 and 79A.05.635 through 79A.05.695 pursuant to 1999 c 249 s 1601. The references to RCW 79A.05.600 through 79A.05.630 and 79A.05.635 through 79A.05.695 have been combined to accurately reflect those sections that relate to the Washington State Seashore Conservation Area, RCW 79A.05.600 through 79A.05.695.

Sec. 58. RCW 79A.05.693 and 1988 c 75 s 14 are each amended to read as follows:

The ocean beaches within the Seashore Conservation Area are hereby declared a public highway and shall remain forever open to the use of the public as provided in RCW ~~((43.51.695 through 43.51.765))~~ 79A.05.635 through 79A.05.695.

EXPLANATORY NOTE

RCW 43.51.695 through 43.51.765 were recodified as RCW 79A.05.635 through 79A.05.695 pursuant to 1999 c 249 s 1601.

Sec. 59. RCW 79A.05.695 and 1988 c 75 s 15 are each amended to read as follows:

Amendments to the recreation management plan may be adopted jointly by each local government participating in the plan and submitted to the commission for approval. The commission shall approve a proposed amendment if, in the commission's judgment, the amendment adequately fulfills the requirements of RCW ~~((43.51.650 through 43.51.685 and 43.51.695 through 43.51.765))~~ 79A.05.600 through 79A.05.695.

After a plan is approved, the commission may require local jurisdictions to adopt amendments to the plan if the commission finds that such amendments are

necessary to protect public health and safety, or to protect significant natural resources as determined by the agency having jurisdiction over the resource.

EXPLANATORY NOTE

RCW 43.51.650 through 43.51.685 and 43.51.695 through 43.51.765 were recodified as RCW 79A.05.600 through 79A.05.630 and 79A.05.635 through 79A.05.695 pursuant to 1999 c 249 s 1601. These citations have been combined to accurately reflect those sections that relate to the Washington State Seashore Conservation Area, RCW 79A.05.600 through 79A.05.695.

Sec. 60. RCW 79A.05.735 and 1994 c 264 s 23 are each amended to read as follows:

The state department of natural resources and the state parks and recreation commission have joined together in excellent cooperation in the conducting of this study along with the citizen advisory subcommittee and have joined together in cooperation with the department of fish and wildlife to accomplish other projects of multidisciplinary concern, and because it may be in the best interests of the state to continue such cooperation, the state parks and recreation commission, the department of natural resources, and the department of fish and wildlife are hereby directed to consider both short and long term objectives, the expertise of each agency's staff, and alternatives such as reasonably may be expected to safeguard the conservation area's values as described in RCW ((43.51.940)) 79A.05.725 giving due regard to efficiency and economy of management: PROVIDED, That the interests conveyed to or by the state agencies identified in this section shall be managed by the department of natural resources until such time as the state parks and recreation commission or other public agency is managing public recreation areas and facilities located in such close proximity to the conservation area described in RCW ((43.51.942)) 79A.05.730 so as to make combined management of those areas and facilities and transfer of management of the conservation area more efficient and economical than continued management by the department of natural resources. At that time the department of natural resources is directed to negotiate with the appropriate public agency for the transfer of those management responsibilities for the interests obtained within the conservation area under RCW ((43.51.940 through 43.51.945)) 79A.05.725 through 79A.05.745: PROVIDED FURTHER, That the state agencies identified in this section may, by mutual agreement, undertake management of portions of the conservation area as they may from time to time determine in accordance with those rules and regulations established for natural area preserves under chapter 79.70 RCW, for natural and conservation areas under present WAC 352-16-020(3) and (6), and under chapter 77.12 RCW.

EXPLANATORY NOTE

(1) RCW 43.51.940 and 43.51.942 were recodified as RCW 79A.05.725 and 79A.05.730 pursuant to 1999 c 249 s 1601.

(2) RCW 43.51.940 through 43.51.945 were recodified as RCW 79A.05.725 through 79A.05.745 pursuant to 1999 c 249 s 1601.

Sec. 61. RCW 79A.05.750 and 1977 ex.s. c 75 s 1 are each amended to read as follows:

It is the intent of RCW (~~43.51.946 through 43.51.956~~) 79A.05.750 through 79A.05.795 to establish and recognize the Yakima river corridor from Selah Gap (Yakima Ridge) to Union Gap (Rattlesnake Hills) as a uniquely valuable recreation, conservation, and scenic resource in the state of Washington.

EXPLANATORY NOTE

RCW 43.51.946 through 43.51.956 were recodified as RCW 79A.05.750 through 79A.05.795 pursuant to 1999 c 249 s 1601.

Sec. 62. RCW 79A.05.765 and 1977 ex.s. c 75 s 4 are each amended to read as follows:

The Yakima county commissioners are authorized to coordinate the acquisition, development, and operation of the Yakima river conservation area in accordance with the purposes of RCW (~~43.51.946 through 43.51.956~~) 79A.05.750 through 79A.05.795 and in cooperation with public parks, conservation and resource managing agencies.

EXPLANATORY NOTE

RCW 43.51.946 through 43.51.956 were recodified as RCW 79A.05.750 through 79A.05.795 pursuant to 1999 c 249 s 1601.

Sec. 63. RCW 79A.05.780 and 1977 ex.s. c 75 s 7 are each amended to read as follows:

The Washington state parks and recreation commission is directed to consult with the Yakima county commissioners in the acquisition, development, and operation of the Yakima river conservation area in accordance with the purposes of RCW (~~43.51.946 through 43.51.956~~) 79A.05.750 through 79A.05.795 and the Yakima river study authorized in section 170, chapter 269, Laws of 1975, first extraordinary session.

EXPLANATORY NOTE

RCW 43.51.946 through 43.51.956 were recodified as RCW 79A.05.750 through 79A.05.795 pursuant to 1999 c 249 s 1601.

Sec. 64. RCW 79A.05.793 and 1993 sp.s. c 2 s 19 are each amended to read as follows:

Nothing in RCW (~~43.51.946 through 43.51.956~~) 79A.05.750 through 79A.05.795 shall be construed to interfere with the powers, duties, and authority of the state department of fish and wildlife or the state fish and wildlife commission to regulate, manage, conserve, and provide for the harvest of wildlife within such area: PROVIDED, HOWEVER, That no hunting shall be permitted in any state park.

EXPLANATORY NOTE

RCW 43.51.946 through 43.51.956 were recodified as RCW 79A.05.750 through 79A.05.795 pursuant to 1999 c 249 s 1601.

Sec. 65. RCW 79A.15.020 and 1990 1st ex.s. c 14 s 3 are each amended to read as follows:

The habitat conservation account is established in the state treasury. The committee shall administer the account in accordance with chapter ~~((43.99))~~ 79A.25 RCW and this chapter, and shall hold it separate and apart from all other money, funds, and accounts of the committee.

EXPLANATORY NOTE

Chapter 43.99 RCW was recodified as chapter 79A.25 RCW pursuant to 1999 c 249 s 1601.

Sec. 66. RCW 79A.15.030 and 1990 1st ex.s. c 14 s 4 are each amended to read as follows:

(1) Moneys appropriated for this chapter shall be divided equally between the habitat conservation and outdoor recreation accounts and shall be used exclusively for the purposes specified in this chapter.

(2) Moneys deposited in these accounts shall be invested as authorized for other state funds, and any earnings on them shall be credited to the respective account.

(3) All moneys deposited in the habitat conservation and outdoor recreation accounts shall be allocated under RCW ~~((43.98A.040 and 43.98A.050))~~ 79A.15.040 and 79A.15.050 as grants to state or local agencies for acquisition, development, and renovation within the jurisdiction of those agencies, subject to legislative appropriation. The committee may use or permit the use of any funds appropriated for this chapter as matching funds where federal, local, or other funds are made available for projects within the purposes of this chapter.

(4) Projects receiving grants under this chapter that are developed or otherwise accessible for public recreational uses shall be available to the public on a nondiscriminatory basis.

(5) The committee may make grants to an eligible project from both the habitat conservation and outdoor recreation accounts and any one or more of the applicable categories under such accounts described in RCW ~~((43.98A.040 and 43.98A.050))~~ 79A.15.040 and 79A.15.050.

EXPLANATORY NOTE

RCW 43.98A.040 and 43.98A.050 were recodified as RCW 79A.15.040 and 79A.15.050 pursuant to 1999 c 249 s 1601.

Sec. 67. RCW 79A.15.060 and 1999 c 379 s 918 are each amended to read as follows:

(1) The committee may adopt rules establishing acquisition policies and priorities for distributions from the habitat conservation account.

(2) Moneys appropriated for this chapter may not be used by the committee to fund additional staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation and maintenance of areas acquired under this chapter, except that the committee may use moneys appropriated for this chapter for the fiscal biennium ending June 30, 2001, for the administrative costs of implementing the pilot watershed plan implementation program established in section 329(6), chapter 235, Laws of 1997, and developing an inventory of publicly owned lands established in section 329(7), chapter 235, Laws of 1997.

(3) Moneys appropriated for this chapter may be used for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) Except as provided in subsection (5) of this section, the committee may not approve a local project where the local agency share is less than the amount to be awarded from the habitat conservation account.

(5) During the fiscal biennium ending June 30, 2001, the committee may approve a riparian zone habitat protection project established in section 329(6), chapter 235, Laws of 1997, where the local agency share is less than the amount to be awarded from the habitat conservation account.

(6) In determining acquisition priorities with respect to the habitat conservation account, the committee shall consider, at a minimum, the following criteria:

- (a) For critical habitat and natural areas proposals:
 - (i) Community support;
 - (ii) Immediacy of threat to the site;
 - (iii) Uniqueness of the site;
 - (iv) Diversity of species using the site;
 - (v) Quality of the habitat;
 - (vi) Long-term viability of the site;
 - (vii) Presence of endangered, threatened, or sensitive species;
 - (viii) Enhancement of existing public property;
 - (ix) Consistency with a local land use plan, or a regional or state-wide recreational or resource plan; and
 - (x) Educational and scientific value of the site.
- (b) For urban wildlife habitat proposals, in addition to the criteria of (a) of this subsection:
 - (i) Population of, and distance from, the nearest urban area;
 - (ii) Proximity to other wildlife habitat;
 - (iii) Potential for public use; and
 - (iv) Potential for use by special needs populations.

(7) Before October 1st of each even-numbered year, the committee shall recommend to the governor a prioritized list of state agency projects to be funded under RCW ((43.98A.040)) 79A.15.040(1) (a), (b), and (c). The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include,

but not be limited to, a description of each project; and shall describe for each project any anticipated restrictions upon recreational activities allowed prior to the project.

(8) Before October 1st of each year, the committee shall recommend to the governor a prioritized list of all local projects to be funded under RCW ((43.98A.040)) 79A.15.040(1)(c). The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project.

EXPLANATORY NOTE

RCW 43.98A.040 was recodified as RCW 79A.15.040 pursuant to 1999 c 249 s 1601.

Sec. 68. RCW 79A.15.070 and 1999 c 379 s 919 are each amended to read as follows:

(1) In determining which state parks proposals and local parks proposals to fund, the committee shall use existing policies and priorities.

(2) Moneys appropriated for this chapter may not be used by the committee to fund additional staff or other overhead expenses, or by a state, regional, or local agency to fund operation and maintenance of areas acquired under this chapter, except that the committee may use moneys appropriated for this chapter for the fiscal biennium ending June 30, 2001, for the administrative costs of implementing the pilot watershed implementation program established in section 329(6), chapter 235, Laws of 1997, and developing an inventory of publicly owned lands established in section 329(7), chapter 235, Laws of 1997.

(3) Moneys appropriated for this chapter may be used for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) The committee may not approve a project of a local agency where the share contributed by the local agency is less than the amount to be awarded from the outdoor recreation account.

(5) The committee may adopt rules establishing acquisition policies and priorities for the acquisition and development of trails and water access sites to be financed from moneys in the outdoor recreation account.

(6) In determining the acquisition and development priorities, the committee shall consider, at a minimum, the following criteria:

- (a) For trails proposals:
 - (i) Community support;
 - (ii) Immediacy of threat to the site;
 - (iii) Linkage between communities;
 - (iv) Linkage between trails;
 - (v) Existing or potential usage;

- (vi) Consistency with an existing local land use plan or a regional or state-wide recreational or resource plan;
- (vii) Availability of water access or views;
- (viii) Enhancement of wildlife habitat; and
- (ix) Scenic values of the site.
- (b) For water access proposals:
 - (i) Community support;
 - (ii) Distance from similar water access opportunities;
 - (iii) Immediacy of threat to the site;
 - (iv) Diversity of possible recreational uses; and
 - (v) Public demand in the area.

(7) Before October 1st of each even-numbered year, the committee shall recommend to the governor a prioritized list of state agency projects to be funded under RCW ((43.98A.050)) 79A.15.050(1) (a), (c), and (d). The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project; and shall describe for each project any anticipated restrictions upon recreational activities allowed prior to the project.

(8) Before October 1st of each year, the committee shall recommend to the governor a prioritized list of all local projects to be funded under RCW ((43.98A.050)) 79A.15.050(1) (b), (c), and (d) of this act. The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project.

EXPLANATORY NOTE

RCW 43.98A.050 was recodified as RCW 79A.15.050 pursuant to 1999 c 249 s 1601.

Sec. 69. RCW 79A.25.020 and 1989 c 237 s 4 are each amended to read as follows:

The director shall have the following powers and duties:

- (1) To supervise the administrative operations of the committee and its staff;
- (2) To administer recreation grant-in-aid programs and provide technical assistance to state and local agencies;
- (3) To prepare and update a strategic plan for the acquisition, renovation, and development of recreational resources and the preservation and conservation of open space. The plan shall be prepared in coordination with the office of the governor and the office of financial management, with participation of federal, state, and local agencies having recreational responsibilities, user groups, private sector interests, and the general public. The plan shall be submitted to the committee for review, and the committee shall submit its recommendations on the

plan to the governor. The plan shall include, but is not limited to: (a) an inventory of current resources; (b) a forecast of recreational resource demand; (c) identification and analysis of actual and potential funding sources; (d) a process for broad scale information gathering; (e) an assessment of the capabilities and constraints, both internal and external to state government, that affect the ability of the state to achieve the goals of the plan; (f) an analysis of strategic options and decisions available to the state; (g) an implementation strategy that is coordinated with executive policy and budget priorities; and (h) elements necessary to qualify for participation in or the receipt of aid from any federal program for outdoor recreation;

(4) To represent and promote the interests of the state on recreational issues and further the mission of the committee;

(5) Upon approval of the committee, to enter into contracts and agreements with private nonprofit corporations to further state goals of preserving, conserving, and enhancing recreational resources and open space for the public benefit and use;

(6) To appoint such technical and other committees as may be necessary to carry out the purposes of this chapter;

(7) To create and maintain a repository for data, studies, research, and other information relating to recreation in the state, and to encourage the interchange of such information;

(8) To encourage and provide opportunities for interagency and regional coordination and cooperative efforts between public agencies and between public and private entities involved in the development and preservation of recreational resources; and

(9) To prepare the state trails plan, as required by RCW ~~((67.32.050))~~ 79A.35.040.

EXPLANATORY NOTE

RCW 67.32.050 was recodified as RCW 79A.35.040 pursuant to 1999 c 249 s 1601.

Sec. 70. RCW 79A.25.030 and 1995 c 166 s 1 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 or her 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 or her 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 or her 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 next biennium after the period from which the study data were collected. The director may delegate his or her duties and authority under this section to one or more persons of the department of licensing if he or she 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)) 79A.25.040, upon legislative appropriation.

EXPLANATORY NOTE

RCW 43.99.040 was recodified as RCW 79A.25.040 pursuant to 1999 c 249 s 1601.

Also makes the section gender neutral.

Sec. 71. RCW 79A.25.040 and 1995 c 166 s 2 are each amended to read as follows:

There is created the marine fuel tax refund account in the state treasury. 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)) 79A.25.050, except that he or she 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)) 79A.25.030 more than the greater of the following amounts: (1) An amount equal to two percent of all moneys paid to him or her 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.

EXPLANATORY NOTE

RCW 43.99.050 and 43.99.030 were recodified as RCW 79A.25.050 and 79A.25.030 pursuant to 1999 c 249 s 1601.

Also makes the section gender neutral.

Sec. 72. RCW 79A.25.060 and 1995 c 166 s 3 are each amended to read as follows:

The outdoor recreation account is created in the state treasury. Moneys in the account are subject to legislative appropriation. The committee shall administer the account in accordance with chapter ((43.98A)) 79A.15 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, 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.

EXPLANATORY NOTE

Chapter 43.98A RCW was recodified as chapter 79A.15 RCW pursuant to 1999 c 249 s 1601.

Sec. 73. RCW 79A.25.070 and 1995 c 166 s 4 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. 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))~~ 79A.25.030, 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 recreation resource account and the remainder to the motor vehicle fund.

EXPLANATORY NOTE

RCW 43.99.030 was recodified as RCW 79A.25.030 pursuant to 1999 c 249 s 1601.

Sec. 74. RCW 79A.25.080 and 1999 c 341 s 1 are each amended to read as follows:

Moneys transferred to the 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))~~ 79A.25.110. 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 as grants to state agencies for (a) acquisition of title to, or any interests or rights in, marine recreation land, (b) capital improvement and renovation of marine recreation land, including periodic dredging in accordance with subsection (3) of this section, if needed, to maintain or make the facility more useful, 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 and renovation of marine recreation land, including periodic dredging in accordance with subsection (3) of this section, if needed, to maintain or make the facility more useful. 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.

(3) For the purposes of this section "periodic dredging" is limited to dredging of materials that have been deposited in a channel due to unforeseen events. This dredging should extend the expected usefulness of the facility for at least five years.

EXPLANATORY NOTE

RCW 43.99.110 was recodified as RCW 79A.25.110 pursuant to 1999 c 249 s 1601.

Sec. 75. RCW 79A.25.100 and 1965 c 5 s 10 are each amended to read as follows:

Marine recreation land with respect to which money has been expended under RCW ((43.99.080)) 79A.25.080 shall not, without the approval of the committee, be converted to uses other than those for which such expenditure was originally approved. The committee shall only approve any such conversion upon conditions which will assure the substitution of other marine recreation land of at least equal fair market value at the time of conversion and of as nearly as feasible equivalent usefulness and location.

EXPLANATORY NOTE

RCW 43.99.080 was recodified as RCW 79A.25.080 pursuant to 1999 c 249 s 1601.

Sec. 76. RCW 79A.25.180 and 1989 c 237 s 6 are each amended to read as follows:

The director shall periodically review and have updated the guide authorized by RCW ((43.99.142)) 79A.25.170.

EXPLANATORY NOTE

RCW 43.99.142 was recodified as RCW 79A.25.170 pursuant to 1999 c 249 s 1601.

Sec. 77. RCW 79A.25.200 and 1995 c 166 s 10 are each amended 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)) 79A.35 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)) 79A.25.070 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.

EXPLANATORY NOTE

(1) Chapter 67.32 RCW was recodified as chapter 79A.35 RCW pursuant to 1999 c 249 s 1601.

(2) RCW 43.99.070 was recodified as RCW 79A.25.070 pursuant to 1999 c 249 s 1601.

Sec. 78. RCW 79A.25.240 and 1999 1st sp.s. c 13 s 17 are each amended to read as follows:

The interagency committee for outdoor recreation shall provide necessary grants and loan administration support to the salmon recovery funding board as provided in RCW 75.46.160. The committee shall also be responsible for tracking salmon recovery expenditures under RCW 75.46.180. The committee shall provide all necessary administrative support to the board, and the board shall be located with the committee. The committee shall ~~((coordinate its activities under this section with the salmon recovery technical review team created in section 7 of this act and))~~ provide necessary information to the salmon recovery office.

EXPLANATORY NOTE

Section 7, chapter 13, Laws of 1999 1st sp. sess. was vetoed by the governor.

Sec. 79. RCW 79A.25.250 and 1980 c 89 s 3 are each amended to read as follows:

Recognizing the fact that the demand for park services is greatest in our urban areas, that parks should be accessible to all Washington citizens, that the urban poor cannot afford to travel to remotely located parks, that few state parks are located in or near urban areas, that a need exists to conserve energy, and that local governments having jurisdiction in urban areas cannot afford the costs of maintaining and operating the extensive park systems needed to service their large populations, the legislature hereby directs the interagency committee for outdoor recreation to place a high priority on the acquisition, development, redevelopment, and renovation of parks to be located in or near urban areas and to be particularly accessible to and used by the populations of those areas. For purposes of RCW ~~((43.51.380 and 43.51.385))~~ 79A.25.250 and 79A.05.300, "urban areas" means any incorporated city with a population of five thousand persons or greater or any county with a population density of two hundred fifty persons per square mile or greater. This section shall be implemented by January 1, 1981.

EXPLANATORY NOTE

RCW 43.51.380 and 43.51.385 were recodified as RCW 79A.25.250 and 79A.05.300 pursuant to 1999 c 249 s 1601.

Sec. 80. RCW 79A.25.800 and 1998 c 264 s 1 are each amended to read as follows:

(1) The legislature recognizes that coordinated funding efforts are needed to maintain, develop, and improve the state's community outdoor athletic fields. Rapid population growth and increased urbanization have caused a decline in suitable outdoor fields for community athletic activities and has resulted in overcrowding and deterioration of existing surfaces. Lack of adequate community outdoor athletic fields directly affects the health and well-being of all citizens of the state, reduces the state's economic viability, and prevents Washington from maintaining and achieving the quality of life that it deserves. Therefore, it is the policy of the state and its agencies to maintain, develop, fund, and improve youth

or community athletic facilities, including but not limited to community outdoor athletic fields.

(2) In carrying out this policy, the legislature intends to promote the building of new community outdoor athletic fields, the upgrading of existing community outdoor athletic fields, and the maintenance of existing community outdoor athletic fields across the state of Washington. The purpose of RCW (~~43.99.800 through 43.99.830~~) 79A.25.800 through 79A.25.830 is to create an advisory council to provide information and advice to the interagency committee for outdoor recreation in the distribution of the funds in the youth athletic facility grant account established in RCW 43.99N.060(4).

EXPLANATORY NOTE

RCW 43.99.800 through 43.99.830 were recodified as RCW 79A.25.800 through 79A.25.830 pursuant to 1999 c 249 s 1601.

Sec. 81. RCW 79A.25.820 and 1998 c 264 s 3 are each amended to read as follows:

Subject to available resources, the interagency committee for outdoor recreation, in consultation with the community outdoor athletic fields advisory council may:

(1) Prepare and update a strategic plan for the development, maintenance, and improvement of community outdoor athletic fields in the state. In the preparation of such plan, the interagency committee for outdoor recreation may use available data from federal, state, and local agencies having community outdoor athletic responsibilities, user groups, private sector interests, and the general public. The plan may include, but is not limited to:

- (a) An inventory of current community outdoor athletic fields;
- (b) A forecast of demand for these fields;
- (c) An identification and analysis of actual and potential funding sources; and
- (d) Other information the interagency committee for outdoor recreation deems appropriate to carry out the purposes of RCW (~~43.99.800 through 43.99.830~~) 79A.25.800 through 79A.25.830;

(2) Determine the eligibility requirements for cities, counties, and qualified nonprofit organizations to access funding from the youth athletic facility grant account created in RCW 43.99N.060(4);

(3) Encourage and provide opportunities for interagency and regional coordination and cooperative efforts between public agencies and between public entities and nonprofit organizations involved in the maintenance, development, and improvement of community outdoor athletic fields; and

(4) Create and maintain data, studies, research, and other information relating to community outdoor athletic fields in the state, and to encourage the exchange of this information.

EXPLANATORY NOTE

RCW 43.99.800 through 43.99.830 were recodified as RCW 79A.25.800 through 79A.25.830 pursuant to 1999 c 249 s 1601.

Sec. 82. RCW 79A.25.830 and 1998 c 264 s 4 are each amended to read as follows:

The interagency committee for outdoor recreation may receive gifts, grants, or endowments from public and private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of RCW ~~((43.99.800 through 43.99.830))~~ 79A.25.800 through 79A.25.830 and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710.

EXPLANATORY NOTE

RCW 43.99.800 through 43.99.830 were recodified as RCW 79A.25.800 through 79A.25.830 pursuant to 1999 c 249 s 1601.

Sec. 83. RCW 79A.30.010 and 1995 c 200 s 2 are each amended to read as follows:

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 RCW ~~((67.18.030))~~ 79A.30.030.

(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 RCW ~~((67.18.020))~~ 79A.30.020.

EXPLANATORY NOTE

RCW 67.18.030 and 67.18.020 were recodified as RCW 79A.30.030 and 79A.30.020, respectively, pursuant to 1999 c 249 s 1601.

Sec. 84. RCW 79A.30.020 and 1995 c 200 s 3 are each amended to read as follows:

(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 July 23, 1995, for the state horse park shall be purchased under chapter ~~((43.98A))~~ 79A.15 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 RCW ~~((67.18.030))~~ 79A.30.030.

EXPLANATORY NOTE

(1) Chapter 43.98A RCW was recodified as chapter 79A.15 RCW pursuant to 1999 c 249 s 1601.

(2) RCW 67.18.030 was recodified as RCW 79A.30.030 pursuant to 1999 c 249 s 1601.

Sec. 85. RCW 79A.30.030 and 1995 c 200 s 4 are each amended to read as follows:

(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 RCW ~~((67.18.040))~~ 79A.30.040, 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.

EXPLANATORY NOTE

RCW 67.18.040 was recodified as RCW 79A.30.040 pursuant to 1999 c 249 s 1601.

Sec. 86. RCW 79A.35.030 and 1970 ex.s. c 76 s 4 are each amended to read as follows:

(1) The system shall be composed of trails as designated by the IAC. Such trails shall meet the conditions established in this chapter and such supplementary criteria as the IAC may prescribe.

(2) The IAC shall establish a procedure whereby federal, state, and local governmental agencies and/or public and private organizations may propose trails for inclusion within the system. Such proposals will comply with the proposal requirements contained in RCW ((67-32-060)) 79A.35.050.

(3) In consultation with appropriate federal, state, and local governmental agencies and public and private organizations, the IAC shall establish a procedure for public review of the proposals considered appropriate for inclusion in the state-wide trails system.

EXPLANATORY NOTE

RCW 67.32.060 was recodified as RCW 79A.35.050 pursuant to 1999 c 249 s 1601.

Sec. 87. RCW 79A.40.020 and 1959 c 327 s 2 are each amended to read as follows:

It shall be unlawful after June 10, 1959, to construct or install any such recreational device as set forth in RCW ((70-88-010)) 79A.40.010 without first submitting plans and specifications for such device to the state parks and recreation

commission and receiving the approval of the commission for such construction or installation. Violation of this section shall be a misdemeanor.

EXPLANATORY NOTE

RCW 70.88.010 was recodified as RCW 79A.40.010 pursuant to 1999 c 249 s 1601.

Sec. 88. RCW 79A.40.030 and 1959 c 327 s 3 are each amended to read as follows:

The state parks and recreation commission shall have the authority and the responsibility for the inspection of the devices set forth in RCW ~~((70.88.010))~~ 79A.40.010 and in addition shall have the following powers and duties:

(1) Whenever the commission, after hearing called upon its own motion or upon complaint, finds that additional apparatus, equipment, facilities or devices for use or in connection with the transportation or conveyance of persons upon the devices set forth in RCW ~~((70.88.010))~~ 79A.40.010, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security and safety of the public or employees, it may make and serve an order directing such repairs, improvements, changes, or additions to be made.

(2) If the commission finds that the equipment, or appliances in connection therewith, or the apparatus, or other structures of the recreational device set forth in RCW ~~((70.88.010))~~ 79A.40.010 are defective, and that the operation thereof is dangerous to the employees of the owner or operator of such device or to the public, it shall immediately give notice to the owner or operator of such device of the repairs or reconstruction necessary to place the same in a safe condition, and may prescribe the time within which they shall be made. If, in its opinion, it is needful or proper, the commission may forbid the operation of the device until it is repaired and placed in a safe condition.

EXPLANATORY NOTE

RCW 70.88.010 was recodified as RCW 79A.40.010 pursuant to 1999 c 249 s 1601.

Sec. 89. RCW 79A.40.060 and 1959 c 327 s 6 are each amended to read as follows:

The inspector of recreational devices and his or her assistants shall inspect all equipment and appliances connected with the recreational devices set forth in RCW ~~((70.88.010))~~ 79A.40.010 and make such reports of his or her inspection to the commission as may be required. He or she shall, on discovering any defective equipment, or appliances connected therewith, rendering the use of the equipment dangerous, immediately report the same to the owner or operator of the device on which it is found, and in addition report it to the commission. If in the opinion of the inspector the continued operation of the defective equipment constitutes an immediate danger to the safety of the persons operating or being conveyed by such

equipment, the inspector may condemn such equipment and shall immediately notify the commission of his or her action in this respect: PROVIDED, That inspection required by this chapter must be conducted at least once each year.

EXPLANATORY NOTE

RCW 70.88.010 was recodified as RCW 79A.40.010 pursuant to 1999 c 249 s 1601.

Also makes the section gender neutral.

Sec. 90. RCW 79A.40.080 and 1991 c 75 s 2 are each amended to read as follows:

Inspections, rules, and orders of the state parks and recreation commission resulting from the exercise of the provisions of this chapter and chapter ~~((70.117))~~ 79A.45 RCW shall not in any manner be deemed to impose liability upon the state for any injury or damage resulting from the operation or signing of the facilities regulated by this chapter, and all actions of the state parks and recreation commission and its personnel shall be deemed to be an exercise of the police power of the state.

EXPLANATORY NOTE

Chapter 70.117 RCW was recodified as chapter 79A.45 RCW pursuant to 1999 c 249 s 1601.

Sec. 91. RCW 79A.45.040 and 1989 c 81 s 5 are each amended to read as follows:

Ski area operators shall place a notice of the provisions of RCW ~~((70.117.020(7)))~~ 79A.45.030(7) on their trail maps, at or near the ticket booth, and at the bottom of each ski lift or similar device.

EXPLANATORY NOTE

RCW 70.117.020 was recodified as RCW 79A.45.030 pursuant to 1999 c 249 s 1601.

Sec. 92. RCW 79A.60.010 and 1998 c 219 s 5 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Boat wastes" includes, but is not limited to, sewage, garbage, marine debris, plastics, contaminated bilge water, cleaning solvents, paint scrapings, or discarded petroleum products associated with the use of vessels.

(2) "Boater" means any person on a vessel on waters of the state of Washington.

(3) "Carrying passengers for hire" means carrying passengers in a vessel on waters of the state for valuable consideration, whether given directly or indirectly or received by the owner, agent, operator, or other person having an interest in the vessel. This shall not include trips where expenses for food, transportation, or incidentals are shared by participants on an even basis. Anyone receiving compensation for skills or money for amortization of equipment and carrying

passengers shall be considered to be carrying passengers for hire on waters of the state.

(4) "Commission" means the state parks and recreation commission.

(5) "Darkness" means that period between sunset and sunrise.

(6) "Environmentally sensitive area" means a restricted body of water where discharge of untreated sewage from boats is especially detrimental because of limited flushing, shallow water, commercial or recreational shellfish, swimming areas, diversity of species, the absence of other pollution sources, or other characteristics.

(7) "Guide" means any individual, including but not limited to subcontractors and independent contractors, engaged for compensation or other consideration by a whitewater river outfitter for the purpose of operating vessels. A person licensed under RCW 77.32.211 or 75.28.780 and acting as a fishing guide is not considered a guide for the purposes of this chapter.

(8) "Marina" means a facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(9) "Motor driven boats and vessels" means all boats and vessels which are self propelled.

(10) "Muffler" or "muffler system" means a sound suppression device or system, including an underwater exhaust system, designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and that prevents excessive or unusual noise.

(11) "Operate" means to steer, direct, or otherwise have physical control of a vessel that is underway.

(12) "Operator" means an individual who steers, directs, or otherwise has physical control of a vessel that is underway or exercises actual authority to control the person at the helm.

(13) "Observer" means the individual riding in a vessel who is responsible for observing a water skier at all times.

(14) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(15) "Person" means any individual, sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, or other legal entity located within or outside this state.

(16) "Personal flotation device" means a buoyancy device, life preserver, buoyant vest, ring buoy, or buoy cushion that is designed to float a person in the water and that is approved by the commission.

(17) "Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being

towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(18) "Polluted area" means a body of water used by boaters that is contaminated by boat wastes at unacceptable levels, based on applicable water quality and shellfish standards.

(19) "Public entities" means all elected or appointed bodies, including tribal governments, responsible for collecting and spending public funds.

(20) "Reckless" or "recklessly" means acting carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.

(21) "Sewage pumpout or dump unit" means:

(a) A receiving chamber or tank designed to receive vessel sewage from a "porta-potty" or a portable container; and

(b) A stationary or portable mechanical device on land, a dock, pier, float, barge, vessel, or other location convenient to boaters, designed to remove sewage waste from holding tanks on vessels.

(22) "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

(23) "Vessel" includes every description of watercraft on the water, other than a seaplane, used or capable of being used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, sailboards, and small rafts or flotation devices or toys customarily used by swimmers.

(24) "Water skiing" means the physical act of being towed behind a vessel on, but not limited to, any skis, aquaplane, kneeboard, tube, or any other similar device.

(25) "Waters of the state" means any waters within the territorial limits of Washington state.

(26) "Whitewater river outfitter" means any person who is advertising to carry or carries passengers for hire on any whitewater river of the state, but does not include any person whose only service on a given trip is providing instruction in canoeing or kayaking skills.

(27) "Whitewater rivers of the state" means those rivers and streams, or parts thereof, within the boundaries of the state as listed in RCW ((88.12.265)) 79A.60.470 or as designated by the commission under RCW ((88.12.279)) 79A.60.495.

EXPLANATORY NOTE

RCW 88.12.265 and 88.12.279 were recodified as RCW 79A.60.470 and 79A.60.495, respectively, pursuant to 1999 c 249 s 1601.

Sec. 93. RCW 79A.60.030 and 1993 c 244 s 7 are each amended to read as follows:

A person shall not operate a vessel in a negligent manner. For the purposes of this section, to "operate in a negligent manner" means operating a vessel in disregard of careful and prudent operation, or in disregard of careful and prudent rates of speed that are no greater than is reasonable and proper under the conditions

existing at the point of operation, taking into account the amount and character of traffic, size of the lake or body of water, freedom from obstruction to view ahead, effects of vessel wake, and so as not to unduly or unreasonably endanger life, limb, property or other rights of any person entitled to the use of such waters. Except as provided in RCW ((88-12-015)) 79A.60.020, a violation of this section is an infraction under chapter 7.84 RCW.

EXPLANATORY NOTE

RCW 88.12.015 was recodified as RCW 79A.60.020 pursuant to 1999 c 249 s 1601.

Sec. 94. RCW 79A.60.050 and 1998 c 219 s 1 are each amended to read as follows:

(1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the operating of any vessel by any person, the operator is guilty of homicide by watercraft if he or she was operating the vessel:

(a) While under the influence of intoxicating liquor or any drug, as defined by RCW ((88-12-025)) 79A.60.040;

(b) In a reckless manner; or

(c) With disregard for the safety of others.

(2) When the death is caused by a skier towed by a vessel, the operator of the vessel is not guilty of homicide by watercraft.

(3) A violation of this section is punishable as a class A felony according to chapter 9A.20 RCW.

EXPLANATORY NOTE

RCW 88.12.025 was recodified as RCW 79A.60.040 pursuant to 1999 c 249 s 1601.

Sec. 95. RCW 79A.60.060 and 1998 c 219 s 2 are each amended to read as follows:

(1) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

(2) A person is guilty of assault by watercraft if he or she operates any vessel:

(a) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW ((88-12-025)) 79A.60.040, and this conduct is the proximate cause of serious bodily injury to another.

(3) When the injury is caused by a skier towed by a vessel, the operator of the vessel is not guilty of assault by watercraft.

(4) A violation of this section is punishable as a class B felony according to chapter 9A.20 RCW.

EXPLANATORY NOTE

RCW 88.12.025 was recodified as RCW 79A.60.040 pursuant to 1999 c 249 s 1601.

Sec. 96. RCW 79A.60.070 and 1998 c 219 s 3 are each amended to read as follows:

A person convicted under RCW (~~(88.12.029 or 88.12.032)~~) 79A.60.050 or 79A.60.060 shall, as a condition of community (~~(supervision)~~) custody imposed under RCW 9.94A.383 or community placement imposed under RCW 9.94A.120(9), complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in chapter 219, Laws of 1998 requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.

EXPLANATORY NOTE

(1) RCW 88.12.029 and 88.12.032 were recodified as RCW 79A.60.050 and 79A.60.060 pursuant to 1999 c 249 s 1601.

(2) RCW 9.94A.383 was amended by 1999 c 196 s 10, changing the term "community supervision" to "community custody."

Sec. 97. RCW 79A.60.130 and 1993 c 244 s 39 are each amended to read as follows:

(1) All motor-propelled vessels shall be equipped and maintained with an effective muffler that is in good working order and in constant use. For the purpose of this section, an effective muffler or underwater exhaust system does not produce sound levels in excess of ninety decibels when subjected to a stationary sound level test that shall be prescribed by rules adopted by the commission, as of July 25, 1993, and for engines manufactured on or after January 1, 1994, a noise level of eighty-eight decibels when subjected to a stationary sound level test that shall be prescribed by rules adopted by the commission.

(2) A vessel that does not meet the requirements of subsection (1) of this section shall not be operated on the waters of this state.

(3) No person may operate a vessel on waters of the state in such a manner as to exceed a noise level of seventy-five decibels measured from any point on the shoreline of the body of water on which the vessel is being operated that shall be

specified by rules adopted by the commission, as of July 25, 1993. Such measurement shall not preclude a stationary sound level test that shall be prescribed by rules adopted by the commission.

(4) This section does not apply to: (a) A vessel tuning up, testing for, or participating in official trials for speed records or a sanctioned race conducted pursuant to a permit issued by an appropriate governmental agency; or (b) a vessel being operated by a vessel or marine engine manufacturer for the purpose of testing or development. Nothing in this subsection prevents local governments from adopting ordinances to control the frequency, duration, and location of vessel testing, tune-up, and racing.

(5) Any officer authorized to enforce this section who has reason to believe that a vessel is not in compliance with the noise levels established in this section may direct the operator of the vessel to submit the vessel to an on-site test to measure noise level, with the officer on board if the officer chooses, and the operator shall comply with such request. If the vessel exceeds the decibel levels established in this section, the officer may direct the operator to take immediate and reasonable measures to correct the violation.

(6) Any officer who conducts vessel sound level tests as provided in this section shall be qualified in vessel noise testing. Qualifications shall include but may not be limited to the ability to select the appropriate measurement site and the calibration and use of noise testing equipment.

(7) A person shall not remove, alter, or otherwise modify in any way a muffler or muffler system in a manner that will prevent it from being operated in accordance with this chapter.

(8) A person shall not manufacture, sell, or offer for sale any vessel that is not equipped with a muffler or muffler system that does not comply with this chapter. This subsection shall not apply to power vessels designed, manufactured, and sold for the sole purpose of competing in racing events and for no other purpose. Any such exemption or exception shall be documented in any and every sale agreement and shall be formally acknowledged by signature on the part of both the buyer and the seller. Copies of the agreement shall be maintained by both parties. A copy shall be kept on board whenever the vessel is operated.

(9) Except as provided in RCW (~~88-12-015~~) 79A.60.020, a violation of this section is an infraction under chapter 7.84 RCW.

(10) Vessels that are equipped with an engine modified to increase performance beyond the engine manufacturer's stock configuration shall have an exhaust system that complies with the standards in this section after January 1, 1994. Until that date, operators or owners, or both, of such vessels with engines that are out of compliance shall be issued a warning and be given educational materials about types of muffling systems available to muffle noise from such high performance engines.

(11) Nothing in this section preempts a local government from exercising any power that it possesses under the laws or Constitution of the state of Washington to adopt more stringent regulations.

EXPLANATORY NOTE

RCW 88.12.015 was recodified as RCW 79A.60.020 pursuant to 1999 c 249 s 1601.

Sec. 98. RCW 79A.60.160 and 1999 c 310 s 1 are each amended to read as follows:

(1) No person may operate or permit the operation of a vessel on the waters of the state without a personal flotation device on board for each person on the vessel. Each personal flotation device shall be in serviceable condition, of an appropriate size, and readily accessible.

(2) Except as provided in RCW ((88.12.015)) 79A.60.020, a violation of subsection (1) of this section is an infraction under chapter 7.84 RCW if the vessel is not carrying passengers for hire.

(3) A violation of subsection (1) of this section is a misdemeanor punishable under RCW 9.92.030, if the vessel is carrying passengers for hire.

(4) No person shall operate a vessel under nineteen feet in length on the waters of this state with a child twelve years old and under, unless the child is wearing a personal flotation device that meets or exceeds the United States coast guard approval standards of the appropriate size, while the vessel is underway. For the purposes of this section, a personal flotation device is not considered readily accessible for children twelve years old and under unless the device is worn by the child while the vessel is underway. The personal flotation device must be worn at all times by a child twelve years old and under whenever the vessel is underway and the child is on an open deck or open cockpit of the vessel. The following circumstances are excepted:

(a) While a child is below deck or in the cabin of a boat with an enclosed cabin;

(b) While a child is on a United States coast guard inspected passenger-carrying vessel operating on the navigable waters of the United States; or

(c) While on board a vessel at a time and place where no person would reasonably expect a danger of drowning to occur.

(5) Except as provided in RCW ((88.12.015)) 79A.60.020, a violation of subsection (4) of this section is an infraction under chapter 7.84 RCW. Enforcement of subsection (4) of this section by law enforcement officers may be accomplished as a primary action, and need not be accompanied by the suspected violation of some other offense.

EXPLANATORY NOTE

RCW 88.12.015 was recodified as RCW 79A.60.020 pursuant to 1999 c 249 s 1601.

Sec. 99. RCW 79A.60.170 and 1993 c 244 s 15 are each amended to read as follows:

(1) The purpose of this section is to promote safety in water skiing on the waters of Washington state, provide a means of ensuring safe water skiing and promote the enjoyment of water skiing.

(2) No vessel operator may tow or attempt to tow a water skier on any waters of Washington state unless such craft shall be occupied by at least an operator and an observer. The observer shall continuously observe the person or persons being towed and shall display a flag immediately after the towed person or persons fall into the water, and during the time preparatory to skiing while the person or persons are still in the water. Such flag shall be a bright red or brilliant orange color, measuring at least twelve inches square, mounted on a pole not less than twenty-four inches long and displayed as to be visible from every direction. This subsection does not apply to a personal watercraft, the design of which makes no provision for carrying an operator or any other person on board, and that is actually operated by the person or persons being towed. Every remote-operated personal watercraft shall have a flag attached which meets the requirements of this subsection. Except as provided under RCW ~~((88.12.015))~~ 79A.60.020, a violation of this subsection is an infraction under chapter 7.84 RCW.

(3) The observer and the operator shall not be the same person. The observer shall be an individual who meets the minimum qualifications for an observer established by rules of the commission. Except as provided under RCW ~~((88.12.015))~~ 79A.60.020, a violation of this subsection is an infraction under chapter 7.84 RCW.

(4) No person shall engage or attempt to engage in water skiing without wearing a personal flotation device. Except as provided under RCW ~~((88.12.015))~~ 79A.60.020, a violation of this subsection is an infraction under chapter 7.84 RCW.

(5) No person shall engage or attempt to engage in water skiing, or operate any vessel to tow a water skier, on the waters of Washington state during the period from one hour after sunset until one hour prior to sunrise. A violation of this subsection is a misdemeanor, punishable as provided under RCW 9.92.030.

(6) No person engaged in water skiing either as operator, observer, or skier, shall conduct himself or herself in a reckless manner that willfully or wantonly endangers, or is likely to endanger, any person or property. A violation of this subsection is a misdemeanor as provided under RCW 9.92.030.

(7) The requirements of subsections (2), (3), (4), and (5) of this section shall not apply to persons engaged in tournaments, competitions, or exhibitions that have been authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events.

EXPLANATORY NOTE

RCW 88.12.015 was recodified as RCW 79A.60.020 pursuant to 1999 c 249 s 1601.

Sec. 100. RCW 79A.60.180 and 1993 c 244 s 16 are each amended to read as follows:

(1) A person shall not load or permit to be loaded a vessel with passengers or cargo beyond its safe carrying ability or carry passengers or cargo in an unsafe manner taking into consideration weather and other existing operating conditions.

(2) A person shall not operate or permit to be operated a vessel equipped with a motor or other propulsion machinery of a power beyond the vessel's ability to operate safely, taking into consideration the vessel's type, use, and construction, the weather conditions, and other existing operating conditions.

(3) A violation of subsection (1) or (2) of this section is an infraction punishable as provided under chapter 7.84 RCW except as provided under RCW ((88-12-015)) 79A.60.020 or where the overloading or overpowering is reasonably advisable to effect a rescue or for some similar emergency purpose.

(4) If it appears reasonably certain to any law enforcement officer that a person is operating a vessel clearly loaded or powered beyond its safe operating ability and in the judgment of that officer the operation creates an especially hazardous condition, the officer may direct the operator to take immediate and reasonable steps necessary for the safety of the individuals on board the vessel, including directing the operator to return to shore or a mooring and to remain there until the situation creating the hazard is corrected or ended. Failure to follow the direction of an officer under this subsection is a misdemeanor punishable as provided under RCW 9.92.030.

EXPLANATORY NOTE

RCW 88.12.015 was recodified as RCW 79A.60.020 pursuant to 1999 c 249 s 1601.

Sec. 101. RCW 79A.60.190 and 1993 c 244 s 17 are each amended to read as follows:

(1) A person shall not operate a personal watercraft unless each person aboard the personal watercraft is wearing a personal flotation device approved by the commission. Except as provided for in RCW ((88-12-015)) 79A.60.020, a violation of this subsection is a civil infraction punishable under RCW 7.84.100.

(2) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch shall attach the lanyard to his or her person, clothing, or personal flotation device as appropriate for the specific vessel. It is unlawful for any person to remove or disable a cutoff switch that was installed by the manufacturer.

(3) A person shall not operate a personal watercraft during darkness.

(4) A person under the age of fourteen shall not operate a personal watercraft on the waters of this state.

(5) A person shall not operate a personal watercraft in a reckless manner, including recklessly weaving through congested vessel traffic, recklessly jumping the wake of another vessel unreasonably or unnecessarily close to the vessel or

when visibility around the vessel is obstructed, or recklessly swerving at the last possible moment to avoid collision.

(6) A person shall not lease, hire, or rent a personal watercraft to a person under the age of sixteen.

(7) Subsections (1) through (6) of this section shall not apply to a performer engaged in a professional exhibition or a person participating in a regatta, race, marine parade, tournament, or exhibition authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events.

(8) Violations of subsections (2) through (6) of this section constitute a misdemeanor under RCW 9.92.030.

EXPLANATORY NOTE

RCW 88.12.015 was recodified as RCW 79A.60.020 pursuant to 1999 c 249 s 1601.

Sec. 102. RCW 79A.60.200 and 1996 c 36 s 1 are each amended to read as follows:

(1) The operator of a vessel involved in a collision, accident, or other casualty, to the extent the operator can do so without serious danger to the operator's own vessel or persons aboard, shall render all practical and necessary assistance to persons affected by the collision, accident, or casualty to save them from danger caused by the incident. Under no circumstances may the rendering of assistance or other compliance with this section be evidence of the liability of such operator for the collision, accident, or casualty. The operator shall also give all pertinent accident information, as specified by rule by the commission, to the law enforcement agency having jurisdiction: PROVIDED, That this requirement shall not apply to operators of vessels when they are participating in an organized competitive event authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events. These duties are in addition to any duties otherwise imposed by law. Except as provided for in RCW ((88.12.015)) 79A.60.020 and subsection (3) of this section, a violation of this subsection is a civil infraction punishable under RCW 7.84.100.

(2) Any person who complies with subsection (1) of this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty, without objection of the person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance, where the assisting person acts as any reasonably prudent person would have acted under the same or similar circumstances.

(3) An operator of a vessel is guilty of a class C felony and is punishable pursuant to RCW 9A.20.021 if the operator: (a) Is involved in a collision that results in injury to a person; (b) knew or reasonably should have known that a person was injured in the collision; and (c) leaves the scene of the collision without rendering all practical and necessary assistance to the injured person as required pursuant to subsection (1) of this section, under circumstances in which the

operator could have rendered assistance without serious danger to the operator's own vessel or persons aboard. This subsection (3) does not apply to vessels involved in commerce, including but not limited to tugs, barges, cargo vessels, commercial passenger vessels, fishing vessels, and processing vessels.

EXPLANATORY NOTE

RCW 88.12.015 was recodified as RCW 79A.60.020 pursuant to 1999 c 249 s 1601.

Sec. 103. RCW 79A.60.300 and 1994 c 51 s 8 are each amended to read as follows:

The provisions of RCW (~~88.12.185 through 88.12.225~~) 79A.60.230 through 79A.60.290 do not apply to vessels secured pursuant to chapter (~~88.27~~) 79A.65 RCW.

EXPLANATORY NOTE

(1) Chapter 88.27 RCW was recodified as chapter 79A.65 RCW pursuant to 1999 c 249 s 1601.

(2) RCW 88.12.185 through 88.12.225 were recodified as RCW 79A.60.230 through 79A.60.290 pursuant to 1999 c 249 s 1601.

Sec. 104. RCW 79A.60.400 and 1993 c 244 s 26 are each amended to read as follows:

The purpose of RCW (~~88.12.250 through 88.12.275~~) 79A.60.440 through 79A.60.480 is to further the public interest, welfare, and safety by providing for the protection and promotion of safety in the operation of vessels carrying passengers for hire on the whitewater rivers of this state.

EXPLANATORY NOTE

RCW 88.12.250 through 88.12.275 were recodified as RCW 79A.60.440 through 79A.60.480 pursuant to 1999 c 249 s 1601.

Sec. 105. RCW 79A.60.410 and 1997 c 391 s 2 are each amended to read as follows:

(1) No person shall act in the capacity of a paid whitewater river outfitter, or advertise in any newspaper or magazine or any other trade publication, or represent himself or herself as a whitewater river outfitter in the state, without first obtaining a whitewater river outfitter's license from the department of licensing in accordance with RCW (~~88.12.275~~) 79A.60.480.

(2) Every whitewater river outfitter's license must, at all times, be conspicuously placed on the premises set forth in the license.

EXPLANATORY NOTE

RCW 88.12.275 was recodified as RCW 79A.60.480 pursuant to 1999 c 249 s 1601.

Sec. 106. RCW 79A.60.420 and 1997 c 391 s 3 are each amended to read as follows:

Except as provided in RCW (~~88.12.275~~) 79A.60.480, the commission of a prohibited act or the omission of a required act under RCW (~~88.12.245 through 88.12.275~~) 79A.60.430 through 79A.60.480 constitutes a misdemeanor, punishable as provided under RCW 9.92.030.

EXPLANATORY NOTE

(1) RCW 88.12.275 was recodified as RCW 79A.60.480 pursuant to 1999 c 249 s 1601.

(2) RCW 88.12.245 through 88.12.275 were recodified as RCW 79A.60.430 through 79A.60.480 pursuant to 1999 c 249 s 1601.

Sec. 107. RCW 79A.60.440 and 1993 c 244 s 28 are each amended to read as follows:

(1) No person may operate any vessel carrying passengers for hire on whitewater rivers in a manner that interferes with other vessels or with the free and proper navigation of the rivers of this state.

(2) Every operator of a vessel carrying passengers for hire on whitewater rivers shall at all times operate the vessel in a careful and prudent manner and at such a speed as to not endanger the life, limb, or property of any person.

(3) No vessel carrying passengers for hire on whitewater rivers may be loaded with passengers or cargo beyond its safe carrying capacity taking into consideration the type and construction of the vessel and other existing operating conditions. In the case of inflatable vessels, safe carrying capacity in whitewater shall be considered as less than the United States coast guard capacity rating for each vessel. This subsection shall not apply in cases of an unexpected emergency on the river.

(4) Individuals licensed under chapter 77.32 RCW and acting as fishing guides are exempt from RCW (~~88.12.235~~) 79A.60.420 and (~~88.12.260 through 88.12.275~~) 79A.60.460 through 79A.60.480.

EXPLANATORY NOTE

(1) RCW 88.12.235 was recodified as RCW 79A.60.420 pursuant to 1999 c 249 s 1601.

(2) RCW 88.12.260 through 88.12.275 were recodified as RCW 79A.60.460 through 79A.60.480 pursuant to 1999 c 249 s 1601.

Sec. 108. RCW 79A.60.470 and 1997 c 391 s 6 are each amended to read as follows:

Whitewater river sections include but are not limited to:

- (1) Green river above Flaming Geyser state park;
- (2) Klickitat river above the confluence with Summit creek;
- (3) Methow river below the town of Carlton;
- (4) Sauk river above the town of Darrington;
- (5) Skagit river above Bacon creek;
- (6) Suiattle river;
- (7) Tieton river below Rimrock dam;

- (8) Skykomish river below Sunset Falls and above the Highway 2 bridge one mile east of the town of Gold Bar;
- (9) Wenatchee river above the Wenatchee county park at the town of Monitor;
- (10) White Salmon river; and
- (11) Any other section of river designated a "whitewater river section" by the commission under RCW (~~(88.12.279)~~) 79A.60.495.

EXPLANATORY NOTE

RCW 88.12.279 was recodified as RCW 79A.60.495 pursuant to 1999 c 249 s 1601.

Sec. 109. RCW 79A.60.480 and 1997 c 391 s 7 are each amended to read as follows:

(1) The department of licensing shall issue a whitewater river outfitter's license to an applicant who submits a completed application, pays the required fee, and complies with the requirements of this section.

(2) An applicant for a whitewater river outfitter's license shall make application upon a form provided by the department of licensing. The form must be submitted annually and include the following information:

(a) The name, residence address, and residence telephone number, and the business name, address, and telephone number of the applicant;

(b) Certification that all employees, subcontractors, or independent contractors hired as guides meet training standards under RCW (~~(88.12.245(2))~~) 79A.60.430 before carrying any passengers for hire;

(c) Proof that the applicant has liability insurance for a minimum of three hundred thousand dollars per claim for occurrences by the applicant and the applicant's employees that result in bodily injury or property damage. All guides must be covered by the applicant's insurance policy;

(d) Certification that the applicant will maintain the insurance for a period of not less than one year from the date of issuance of the license; and

(e) Certification by the applicant that for a period of not less than twenty-four months immediately preceding the application the applicant:

(i) Has not had a license, permit, or certificate to carry passengers for hire on a river revoked by another state or by an agency of the government of the United States due to a conviction for a violation of safety or insurance coverage requirements no more stringent than the requirements of this chapter; and

(ii) Has not been denied the right to apply for a license, permit, or certificate to carry passengers for hire on a river by another state.

(3) The department of licensing shall charge a fee for each application, to be set in accordance with RCW 43.24.086.

(4) Any person advertising or representing himself or herself as a whitewater river outfitter who is not currently licensed is guilty of a gross misdemeanor.

(5) The department of licensing shall submit annually a list of licensed persons and companies to the department of community, trade, and economic development, tourism promotion division.

(6) If an insurance company cancels or refuses to renew insurance for a licensee, the insurance company shall notify the department of licensing in writing of the termination of coverage and its effective date not less than thirty days before the effective date of termination.

(a) Upon receipt of an insurance company termination notice, the department of licensing shall send written notice to the licensee that on the effective date of termination the department of licensing will suspend the license unless proof of insurance as required by this section is filed with the department of licensing before the effective date of the termination.

(b) If an insurance company fails to give notice of coverage termination, this failure shall not have the effect of continuing the coverage.

(c) The department of licensing may suspend a license under this section if the licensee fails to maintain in full force and effect the insurance required by this section.

(7) The state of Washington shall be immune from any civil action arising from the issuance of a license under this section.

EXPLANATORY NOTE

RCW 88.12.245 was recodified as RCW 79A.60.430 pursuant to 1999 c 249 s 1601.

Sec. 110. RCW 79A.60.485 and 1997 c 391 s 9 are each amended to read as follows:

The department of licensing may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to implement RCW ((88.12.275)) 79A.60.480. The fees must approximate the cost of administration. The fees must be deposited in the master license account.

EXPLANATORY NOTE

RCW 88.12.275 was recodified as RCW 79A.60.480 pursuant to 1999 c 249 s 1601.

Sec. 111. RCW 79A.60.490 and 1997 c 391 s 8 are each amended to read as follows:

Within five days after conviction for any of the provisions of RCW ((88.12.245 through 88.12.275)) 79A.60.430 through 79A.60.480, the court shall forward a copy of the judgment to the department of licensing. After receiving proof of conviction, the department of licensing may suspend the license of any whitewater river outfitter for a period not to exceed one year or until proof of compliance with all licensing requirements and correction of the violation under which the whitewater river outfitter was convicted.

EXPLANATORY NOTE

RCW 88.12.245 through 88.12.275 were recodified as RCW 79A.60.430 through 79A.60.480 pursuant to 1999 c 249 s 1601.

Sec. 112. RCW 79A.60.540 and 1993 c 244 s 33 are each amended to read as follows:

(1) Marinas and boat launches designated as appropriate for installation of a sewage pumpout or dump unit under RCW ((88.12.315)) 79A.60.530 shall be eligible for funding support for installation of such facilities from funds specified in RCW ((88.12.375)) 79A.60.590. The commission shall notify owners or operators of all designated marinas and boat launches of the designation, and of the availability of funding to support installation of appropriate sewage disposal facilities. The commission shall encourage the owners and operators to apply for available funding.

(2) The commission shall seek to provide the most cost-efficient and accessible facilities possible for reducing the amount of boat waste entering the state's waters. The commission shall consider providing funding support for portable pumpout facilities in this effort.

(3) The commission shall contract with, or enter into an interagency agreement with another state agency to contract with, applicants based on the criteria specified below:

(a)(i) Contracts may be awarded to publicly owned, tribal, or privately owned marinas or boat launches.

(ii) Contracts may provide for state reimbursement to cover eligible costs as deemed reasonable by commission rule. Eligible costs include purchase, installation, or major renovation of the sewage pumpout or dump units, including sewer, water, electrical connections, and those costs attendant to the purchase, installation, and other necessary appurtenances, such as required pier space, as determined by the commission.

(iii) Ownership of the sewage pumpout or dump unit will be retained by the state through the commission in privately owned marinas. Ownership of the sewage pumpout or dump unit in publicly owned marinas will be held by the public entity.

(iv) Operation, normal and expected maintenance, and ongoing utility costs will be the responsibility of the contract recipient. The sewage pumpout or dump unit shall be kept in operating condition and available for public use at all times during operating hours of the facility, excluding necessary maintenance periods.

(v) The contract recipient agrees to allow the installation, existence and use of the sewage pumpout or dump unit by granting an irrevocable license for a minimum of ten years at no cost to the commission.

(b) Contracts awarded pursuant to (a) of this subsection shall be subject, for a period of at least ten years, to the following conditions:

(i) Any contract recipient entering into a contract under this section must allow the boating public access to the sewage pumpout or dump unit during operating hours.

(ii) The contract recipient must agree to monitor and encourage the use of the sewage pumpout or dump unit, and to cooperate in any related boater environmental education program administered or approved by the commission.

(iii) The contract recipient must agree not to charge a fee for the use of the sewage pumpout or dump unit.

(iv) The contract recipient must agree to arrange and pay a reasonable fee for a periodic inspection of the sewage pumpout or dump unit by the local health department or appropriate authority.

(v) Use of a free sewage pumpout or dump unit by the boating public shall be deemed to be included in the term "outdoor recreation" for the purposes of chapter 4.24 RCW.

EXPLANATORY NOTE

RCW 88.12.315 and 88.12.375 were recodified as RCW 79A.60.530 and 79A.60.590, respectively, pursuant to 1999 c 249 s 1601.

Sec. 113. RCW 79A.60.590 and 1993 c 244 s 37 are each amended to read as follows:

The amounts allocated in accordance with RCW 82.49.030(3) shall be expended upon appropriation in accordance with the following limitations:

(1) Thirty percent of the funds shall be appropriated to the interagency committee for outdoor recreation and be expended for use by state and local government for public recreational waterway boater access and boater destination sites. Priority shall be given to critical site acquisition. The interagency committee for outdoor recreation shall administer such funds as a competitive grants program. The amounts provided for in this subsection shall be evenly divided between state and local governments.

(2) Thirty percent of the funds shall be expended by the commission exclusively for sewage pumpout or dump units at publicly and privately owned marinas as provided for in RCW (~~88.12.315 and 88.12.325~~) 79A.60.530 and 79A.60.540.

(3) Twenty-five percent of the funds shall be expended for grants to state agencies and other public entities to enforce boating safety and registration laws and to carry out boating safety programs. The commission shall administer such grant program.

(4) Fifteen percent shall be expended for instructional materials, programs or grants to the public school system, public entities, or other nonprofit community organizations to support boating safety and boater environmental education or boat waste management planning. The commission shall administer this program.

EXPLANATORY NOTE

RCW 88.12.315 and 88.12.325 were recodified as RCW 79A.60.530 and 79A.60.540 pursuant to 1999 c 249 s 1601.

Sec. 114. RCW 79A.60.620 and 1991 c 200 s 110 are each amended to read as follows:

(1) The Washington sea grant program, in consultation with the department (~~of ecology~~) of ecology, shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels,

ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials.

EXPLANATORY NOTE

RCW 90.56.090 was recodified as RCW 79A.60.620 pursuant to 1999 c 249 s 1601. This amendment clarifies that the department referred to is the department of ecology.

Sec. 115. RCW 79A.65.010 and 1994 c 51 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) "Charges" means charges of the commission for moorage and storage, and all other charges related to the vessel and owing to or that become owing to the commission, including but not limited to costs of securing, disposing, or removing vessels, damages to any commission facility, and any costs of sale and related legal expenses for implementing RCW ((88.27.020 and 88.27.030)) 79A.65.020 and 79A.65.030.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Commission facility" means any property or facility owned, leased, operated, managed, or otherwise controlled by the commission or by a person pursuant to a contract with the commission.

(4) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest, and shall not include the holder of a bona fide security interest.

(5) "Person" means any natural person, firm, partnership, corporation, association, organization, or any other entity.

(6)(a) "Registered owner" means any person that is either: (i) Shown as the owner in a vessel certificate of documentation issued by the secretary of the United States department of transportation under 46 U.S.C. Sec. 12103; or (ii) the registered owner or legal owner of a vessel for which a certificate of title has been issued under chapter 88.02 RCW; or (iii) the owner of a vessel registered under the vessel registration laws of another state under which laws the commission can readily identify the ownership of vessels registered with that state.

(b) "Registered owner" also includes: (i) Any holder of a security interest or lien recorded with the United States department of transportation with respect to a vessel on which a certificate of documentation has been issued; (ii) any holder of a security interest identified in a certificate of title for a vessel registered under chapter 88.02 RCW; or (iii) any holder of a security interest in a vessel where the holder is identified in vessel registration information of a state with vessel registration laws that fall within (a)(iii) of this subsection and under which laws the commission can readily determine the identity of the holder.

(c) "Registered owner" does not include any vessel owner or holder of a lien or security interest in a vessel if the vessel does not have visible information affixed to it (such as name and hailing port or registration numbers) that will enable the commission to obtain ownership information for the vessel without incurring unreasonable expense.

(7) "Registered vessel" means a vessel having a registered owner.

(8) "Secured vessel" means any vessel that has been secured by the commission that remains in the commission's possession and control.

(9) "Unauthorized vessel" means a vessel using a commission facility of any type whose owner has not paid the required moorage fees or has left the vessel beyond the posted time limits, or a vessel otherwise present without permission of the commission.

(10) "Vessel" means every watercraft or part thereof constructed, used, or capable of being used as a means of transportation on the water. It includes any equipment or personal property on the vessel that is used or capable of being used for the operation, navigation, or maintenance of the vessel.

EXPLANATORY NOTE

RCW 88.27.020 and 88.27.030 were recodified as RCW 79A.65.020 and 79A.65.030 pursuant to 1999 c 249 s 1601.

Sec. 116. RCW 79A.65.030 and 1994 c 51 s 3 are each amended to read as follows:

(1) The commission may provide for the public sale of vessels considered abandoned under RCW (~~88.27.020~~) 79A.65.020. At such sales, the vessels shall be sold for cash to the highest and best bidder.

(2) Before a vessel is sold, the commission shall make a reasonable effort to provide notice of sale, at least twenty days before the day of the sale, to each registered owner of a registered vessel and each owner of an unregistered vessel. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of charges then owing with respect to the vessel, and a summary of the rights and procedures under this chapter. A notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the commission facility is located. This notice shall include: (a) If known, the name of the vessel and the last owner and the owner's address; and (b) a reasonable

description of the vessel. The commission may bid all or part of its charges at the sale and may become a purchaser at the sale.

(3) Before a vessel is sold, any person seeking to redeem a secured vessel may commence a lawsuit in the superior court for the county in which the vessel was secured to contest the commission's decision to secure the vessel or the amount of charges owing. This lawsuit shall be commenced within fifteen days of the date the notification was posted under RCW ((88.27.020(3))) 79A.65.020(3), or the right to a hearing is deemed waived and the owner is liable for any charges owing the commission. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(4) The proceeds of a sale under this section shall be applied first to the payment of the amount of the reasonable charges incurred by the commission and moorage fees owed to the commission, then to the owner or to satisfy any liens of record or security interests of record on the vessel in the order of their priority. If an owner cannot in the exercise of due diligence be located by the commission within one year of the date of the sale, any excess funds from the sale, following the satisfaction of any bona fide security interest, shall revert to the department of revenue under chapter 63.29 RCW. If the sale is for a sum less than the applicable charges, the commission is entitled to assert a claim for the deficiency against the vessel owner. Nothing in this section prevents any lien holder or secured party from asserting a claim for any deficiency owed the lien holder or secured party.

(5) If no one purchases the vessel at a sale, the commission may proceed to properly dispose of the vessel in any way the commission considers appropriate, including, but not limited to, destruction of the vessel or by negotiated sale. The commission may assert a claim against the owner for any charges incurred thereby. If the vessel, or any part of the vessel, or any rights to the vessel, are sold under this subsection, any proceeds from the sale shall be distributed in the manner provided in subsection (4) of this section.

EXPLANATORY NOTE

RCW 88.27.020 was recodified as RCW 79A.65.020 pursuant to 1999 c 249 s 1601.

Sec. 117. RCW 79A.65.040 and 1994 c 51 s 4 are each amended to read as follows:

If the full amount of all charges due the commission on an unauthorized vessel is not paid to the commission within thirty days after the date on which notice is affixed or posted under RCW ((88.27.020(3))) 79A.65.020(3), the commission may bring an action in any court of competent jurisdiction to recover the charges, plus reasonable attorneys' fees and costs incurred by the commission.

EXPLANATORY NOTE

RCW 88.27.020 was recodified as RCW 79A.65.020 pursuant to 1999 c 249 s 1601.

NEW SECTION. Sec. 118. The following acts or parts of acts are each repealed:

(1) RCW 75.08.274 (Taking food fish for propagation or scientific purposes—Permit authorized by rule) and 1998 c 190 s 72, 1995 1st sp.s. c 2 s 15, 1983 1st ex.s. c 46 s 28, 1971 c 35 s 1, & 1955 c 12 s 75.16.010;

(2) RCW 75.25.090 (Personal use fishing licenses—Fees) and 1993 c 215 s 1, 1989 c 305 s 5, & 1987 c 87 s 1;

(3) RCW 75.28.012 (Licensing districts—Created) and 1993 c 20 s 3, 1983 1st ex.s. c 46 s 102, 1971 ex.s. c 283 s 2, & 1957 c 171 s 1;

(4) RCW 76.12.200 (Reserved timber—Report to legislature) and 1989 c 424 s 3; and

(5) RCW 77.32.060 (Licenses, permits, tags, stamps, and raffle tickets—Amount of fees to be retained by license dealers) and 1998 c 245 s 160, 1996 c 101 s 9, 1995 c 116 s 2, 1987 c 506 s 78, 1985 c 464 s 1, 1981 c 310 s 17, 1980 c 78 s 107, 1979 ex.s. c 3 s 3, 1970 ex.s. c 29 s 2, 1957 c 176 s 2, & 1955 c 36 s 77.32.060.

EXPLANATORY NOTE

(1) RCW 75.08.274 was repealed by 1998 c 191 s 46, effective April 1, 1999, without cognizance of its amendment by 1998 c 190 s 72. Repealing this section removes the decodified section from the code.

(2) RCW 75.25.090 was amended by 1993 c 215 s 1 without reference to its repeal by 1993 sp.s. c 17 s 31, effective January 1, 1994. Repealing this section removes the decodified section from the code.

(3) RCW 75.28.012 was amended by 1993 c 20 s 3 without reference to its repeal by 1993 c 340 s 56, effective January 1, 1994. Repealing this section removes the decodified section from the code.

(4) RCW 76.12.200 requires reporting pursuant to RCW 76.12.190 which expired June 30, 1994, making this section obsolete.

(5) RCW 77.32.060 was amended by 1998 c 245 s 160 without reference to its repeal by 1998 c 191 s 45. Repealing this section removes the decodified section from the code.

Passed the House January 31, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 12

[House Bill 2403]

WORLD WAR II MEMORIAL

AN ACT Relating to national recognition of World War II veterans; adding a new section to chapter 73.40 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to recognize the dedication of the men and women of Washington state who served or were wounded, killed, or missing in action during World War II by making a contribution towards the construction of a national World War II memorial to be located in Washington, D.C. The national World War II memorial will be the first national memorial dedicated to all who served during World War II. All military veterans of the war, the citizens on the home front, the nation at-large, and the high moral purpose and idealism that motivated the nation's call to arms will be honored with this memorial.

NEW SECTION. Sec. 2. A new section is added to chapter 73.40 RCW to read as follows:

The national World War II memorial account is created in the custody of the state treasurer. All receipts from appropriations and other sources must be deposited into the account. Expenditures from the account may be used only for the national World War II memorial in Washington, D.C. Only the director of the department of veterans' affairs or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Passed the House February 14, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 13

[Substitute House Bill 2423]

DREDGE SPOILS

AN ACT Relating to dredge spoils; amending RCW 79.90.160; and adding a new section to chapter 47.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 47.04 RCW to read as follows:

The legislature finds and declares that the December 20, 1993, Washington state conveyance of the Mt. St. Helens recovery program, CR601F site, to the city of Castle Rock, should be amended to enable the city to use dredge spoil revenues for recreational purposes adjacent to the Cowlitz river in the city limits of Castle Rock, and also those other properties owned by the city of Castle Rock that are adjacent to the Cowlitz river.

The legislature further declares that the department of transportation shall execute sufficient legal release to accomplish the following:

(1) Dredge spoil revenues from the CR601F site must be dedicated for recreational facilities and recreational administration cost throughout the defined area listed above;

(2) Any mining excavation must meet the requirements of the shoreline management act of 1971 as identified in chapter 90.58 RCW;

(3) All other requirements in the December 20, 1993, conveyance between the state of Washington and the city of Castle Rock will remain in effect; and

(4) The CR601F site remains subject to any agreements with the United States army corps of engineers and other agencies of the federal government.

Sec. 2. RCW 79.90.160 and 1989 c 213 s 4 are each amended to read as follows:

The legislature finds and declares that, due to the extraordinary volume of material washed down onto state-owned beds and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river, the dredge spoils placed upon adjacent publicly and privately owned property in such areas, if further disposed, will be of nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands during the years 1980 through December 31, 1995, as a result of dredging of these rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of such lands without the necessity of any charge by the department of natural resources and free and clear of any interest of the department of natural resources of the state of Washington.

Passed the House February 3, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 14

[Engrossed House Bill 2559]

ADVANCED COLLEGE TUITION PAYMENT PROGRAM—ADMINISTRATIVE ISSUES

AN ACT Relating to the advanced college tuition payment program; and amending RCW 28B.95.020, 28B.95.025, 28B.95.030, 28B.95.050, 28B.95.060, 28B.95.070, 28B.95.100, and 28B.95.110.

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

Sec. 1. RCW 28B.95.020 and 1997 c 289 s 2 are each amended to read as follows:

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

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between July 1st and June 30th.

(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the board

from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units.

(3) "Board" means the higher education coordinating board as defined in chapter 28B.80 RCW.

(4) "Committee on advanced tuition payment" or "committee" means a committee of the following members ~~((or their designees))~~: The state treasurer, the director of the office of financial management, ~~((and the chair))~~ the executive director of the higher education coordinating board, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(5) "Governing body" means the ~~((entity))~~ committee empowered by the legislature to administer the Washington advanced college tuition payment program.

(6) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing that purchases of tuition units will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase.

(7) "Eligible beneficiary" means the person for whom the tuition unit will be redeemed for attendance at an institution of higher education. The beneficiary is that person named by the purchaser at the time that a tuition unit contract is accepted by the ~~((board))~~ governing body. With the exception of tuition unit contracts purchased by qualified organizations as future scholarships, the beneficiary must reside in the state of Washington or otherwise be a resident of the state of Washington at the time the tuition unit contract is accepted by the ~~((board))~~ governing body.

(8) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the ~~((board))~~ governing body for the purchase of tuition units for an eligible beneficiary.

(9) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

(10) "Institution of higher education" means an institution that offers education beyond the secondary level and is ~~((accredited by a nationally recognized accrediting association or is licensed to do business in the state in which it is located))~~ recognized by the internal revenue service under chapter 529 of the internal revenue code.

(11) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

(12) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

(13) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. The maximum tuition and fees charges recognized for beneficiaries enrolled in a state technical college shall be equal to the tuition and fees for the community college system.

(14) "Tuition unit contract" means a contract between an eligible purchaser and the ~~((board))~~ governing body, or a successor agency appointed for administration of this chapter, for the purchase of tuition units for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units.

(15) "Unit purchase price" means the minimum cost to purchase one tuition unit for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate weighted average tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall also include, but not be limited to consideration of past and projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve.

(16) "Weighted average tuition" shall be calculated as the sum of the undergraduate tuition and services and activities fees for each four-year state institution of higher education, multiplied by the respective full-time equivalent student enrollment at each institution divided by the sum total of undergraduate full-time equivalent student enrollments of all four-year state institutions of higher education, rounded to the nearest whole dollar.

(17) "Weighted average tuition unit" is the value of the weighted average tuition and fees divided by one hundred. The weighted average is the basis upon which tuition benefits are calculated for graduate program enrollments and for attendance at nonstate institutions of higher education and is the basis for any refunds provided from the program.

Sec. 2. RCW 28B.95.025 and 1998 c 69 s 2 are each amended to read as follows:

The ~~((committee))~~ board shall maintain appropriate offices and employ and fix compensation of such personnel as may be necessary to perform ~~((its))~~ the advanced college tuition payment program duties ~~((including, but not be limited to a director, an accountant, and a confidential secretary))~~. The board shall consult with the governing body on the selection, compensation, and other issues relating to the employment of the program director. The positions are exempt from classified service under chapter 41.06 RCW. The employees shall be employees of the higher education coordinating board.

Sec. 3. RCW 28B.95.030 and 1997 c 289 s 3 are each amended to read as follows:

(1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired

by the ~~((representative from the higher education coordinating))~~ executive director of the board. The committee shall be supported by staff of the board.

~~(2) ((The committee shall assess the administration and projected financial solvency of the program and make a recommendation to the legislature by the end of the second year after July 27, 1997, as to disposition of the further administration of the program.~~

~~—(3))~~(a) The Washington advanced college tuition payment program shall consist of the sale of tuition units, which may be redeemed by the beneficiary at a future date for an equal number of tuition units regardless of any increase in the price of tuition, that may have occurred in the interval.

(b) Each purchase shall be worth a specific number of or fraction of tuition units at each state institution of higher education as determined by the ~~((board))~~ governing body.

(c) The number of tuition units necessary to pay for a full year's, full-time undergraduate tuition and fee charges at a state institution of higher education shall be set by the ~~((board))~~ governing body at the time a purchaser enters into a tuition unit contract.

(d) The governing body may limit the number of tuition units purchased by any one purchaser or on behalf of any one beneficiary, however, no limit may be imposed that is less than that necessary to achieve four years of full-time, undergraduate tuition charges at a state institution of higher education. The governing body also may, at its discretion, limit the number of participants, if needed, to ensure the actuarial soundness and integrity of the program.

~~((4))~~ (3)(a) No tuition unit may be redeemed until two years after the purchase of the unit. Units may be redeemed for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(b) Units redeemed at a nonstate institution of higher education or for graduate enrollment shall be redeemed at the ~~((current weighted average tuition unit))~~ rate for state public institutions in effect at the time of redemption.

~~((5))~~ (4) The governing body shall determine the conditions under which the tuition benefit may be transferred to another family member. In permitting such transfers, the governing body may not allow the tuition benefit to be bought, sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

~~((6))~~ (5) The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound, such that the assets of the trust will be sufficient to defray the obligations of the trust including the costs of administration. The governing body may, at its discretion, discount the minimum purchase price for certain kinds of purchases such as those from families with young children, as long as the actuarial soundness of the account is not jeopardized.

~~((7))~~ (6) The governing body shall annually determine current value of a tuition unit and the value of the weighted average tuition unit.

~~((8))~~ (7) The governing body shall promote, advertise, and publicize the Washington advanced college tuition payment program.

~~((9))~~ (8) In addition to any other powers conferred by this chapter, the governing body may:

(a) Impose reasonable limits on the number of tuition units or units that may be used in any one year;

(b) Determine and set any time limits, if necessary, for the use of benefits under this chapter;

(c) Impose and collect administrative fees and charges in connection with any transaction under this chapter;

(d) Appoint and use advisory committees as needed to provide program direction and guidance;

(e) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(f) Consider the addition of an advanced payment program for room and board contracts and also consider a college savings program;

(g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities or to further insure the value of the tuition units;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;

(i) Contract for the provision for all or part of the services necessary for the management and operation of the program with other state or nonstate entities authorized to do business in the state;

(j) Contract for other services or for goods needed by the ~~((board))~~ governing body in the conduct of its business under this chapter;

~~((k))~~ ~~((Employ all personnel as necessary to carry out its responsibilities under this chapter and to fix the compensation of these persons;~~

~~((4))~~ Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;

~~((m))~~ (1) Solicit and accept cash donations and grants from any person, governmental agency, private business, or organization; and

~~((n))~~ (m) Perform all acts necessary and proper to carry out the duties and responsibilities of this program under this chapter.

Sec. 4. RCW 28B.95.050 and 1997 c 289 s 5 are each amended to read as follows:

The Washington advanced college tuition payment program is an essential state governmental function. Contracts with eligible participants shall be contractual obligations legally binding on the state as set forth in this chapter. If, and only if, the moneys in the account are projected to be insufficient to cover the

state's contracted expenses for a given biennium, then the legislature shall appropriate to the account the amount necessary to cover such expenses.

The tuition and fees charged by ~~((a state))~~ an eligible institution of higher education to an eligible beneficiary for a current enrollment shall be paid by the account to the extent the beneficiary has remaining unused tuition units for the appropriate school. ~~((The tuition and fees charged to a beneficiary for graduate level enrollments or by a nonstate institution of higher education shall be paid by the account to the extent that the beneficiary has remaining weighted average tuition units.))~~

Sec. 5. RCW 28B.95.060 and 1998 c 69 s 4 are each amended to read as follows:

(1) The Washington advanced college tuition payment program account is created in the custody of the state treasurer. The account shall be a discrete nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2) The governing body shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of payments received from purchasers of tuition units and funds received from other sources, public or private. With the exception of investment and operating costs associated with the investment of money by the investment board paid under RCW 43.33A.160 and 43.84.160, the account shall be credited with all investment income earned by the account. Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment ~~((and budgetary controls of chapter 43.88 RCW, and))~~ of all expenditures. However, an appropriation is not required for such expenditures. Program administration shall include, but not be limited to: The salaries and expenses of the program personnel including lease payments, travel, and goods and services necessary for program operation; contracts for program promotion and advertisement, audits, and account management; and other general costs of conducting the business of the program.

(3) The assets of the account may be spent without appropriation for the purpose of making payments to institutions of higher education on behalf of the qualified beneficiaries, making refunds, transfers, or direct payments upon the termination of the Washington advanced college tuition payment program. Disbursements from the account shall be made only on the authorization of the ~~((board))~~ governing body.

(4) With regard to the assets of the account, the state acts in a fiduciary, not ownership, capacity. Therefore the assets of the program are not considered state money, common cash, or revenue to the state.

Sec. 6. RCW 28B.95.070 and 1997 c 289 s 7 are each amended to read as follows:

(1) The investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the account. All investment and

operating costs associated with the investment of money shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the account.

(2) All investments made by the investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.

(3) As deemed appropriate by the investment board, money in the account may be commingled for investment with other funds subject to investment by the board.

(4) The authority to establish all policies relating to the account, other than the investment policies as set forth in subsections (1) through (3) of this section, resides with the ~~((board))~~ governing body. With the exception of expenses of the investment board set forth in subsection (1) of this section, disbursements from the account shall be made only on the authorization of the governing body, and money in the account may be spent only for the purposes of the program as specified in this chapter.

(5) The investment board shall routinely consult and communicate with the governing body on the investment policy, earnings of the trust, and related needs of the program.

Sec. 7. RCW 28B.95.100 and 1997 c 289 s 10 are each amended to read as follows:

(1) The ~~((committee))~~ governing body, in planning and devising the program, shall consult with the investment board, the state treasurer, ~~((the state actuary,))~~ the office of financial management, and the institutions of higher education.

(2) The governing body may seek the assistance of the state agencies named in subsection (1) of this section, private financial institutions, and any other qualified party with experience in the areas of accounting, actuary, risk management, or investment management to assist with preparing an accounting of the program and ensuring the fiscal soundness of the account.

(3) State agencies and public institutions of higher education shall fully cooperate with the governing body in matters relating to the program in order to ensure the solvency of the account and ability of the governing body to meet outstanding commitments.

Sec. 8. RCW 28B.95.110 and 1997 c 289 s 12 are each amended to read as follows:

(1) The intent of the Washington advanced college tuition payment program is to redeem tuition units for attendance at an institution of higher education. Refunds shall be issued under specific conditions that may include the following:

(a) Certification that the beneficiary, who is eighteen years of age or older, will not attend an institution of higher education, will result in a refund not to exceed ~~((ninety-five percent of))~~ the current weighted average tuition and fees in effect at the time of such certification minus a penalty at the rate established by the internal revenue service under chapter 529 of the internal revenue code. No more

than one hundred tuition units may be refunded per year to any individual making this certification. The refund shall be made no sooner than ninety days after such certification, less any administrative processing fees assessed by the governing body(~~(—The governing body may, at its discretion, impose a greater penalty));~~);

(b) If there is certification of the death or disability of the beneficiary, the refund shall be equal to one hundred percent of any remaining unused tuition units valued at the current weighted average tuition units at the time that such certification is submitted to the ~~((board))~~ governing body, less any administrative processing fees assessed by the ~~((board))~~ governing body;

(c) If there is certification by the student of graduation or program completion, the refund ~~((may))~~ shall be as great as one hundred percent of any remaining unused weighted average tuition units at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body. The governing body may, at its discretion, impose a penalty if needed to comply with federal tax rules;

(d) If there is certification of other tuition and fee scholarships, which will cover the cost of tuition for the eligible beneficiary. The refund shall be equal to one hundred percent of the current weighted average tuition units in effect at the time of the refund request, plus any administrative processing fees assessed by the governing body. The refund under this subsection may not exceed the value of the scholarship;

(e) Incorrect or misleading information provided by the purchaser or beneficiaries may result in a refund of the purchaser's investment, less any administrative processing fees assessed by the governing body. The value of the refund will not exceed the actual dollar value of the purchaser's contributions; and

(f) The governing body may determine other circumstances qualifying for refunds of remaining unused tuition units and may determine the value of that refund.

(2) With the exception of subsection (1)(b) ~~((and)),~~ (e), and (f) of this section no refunds may be made before the ~~((beneficiary is at least eighteen years of age))~~ units have been held for two years.

Passed the House February 3, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 15

[Engrossed Substitute House Bill 2589]

SALMON RECOVERY FUNDING BOARD—PROJECT FUNDING

AN ACT Relating to clarifying what projects are eligible for funding by the salmon recovery funding board; and amending RCW 75.46.170.

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

Sec. 1. RCW 75.46.170 and 1999 sp.s. c 13 s 5 are each amended to read as follows:

(1) The (~~salmon recovery funding~~) salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a state-wide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to partially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to available funding. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

(2)(a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:

(i) Are based upon the limiting factors analysis identified under RCW 75.46.070;

(ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available;

(iii) Will benefit listed species and other fish species; and

(iv) Will preserve high quality salmonid habitat.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

(i) Are the most cost-effective;

(ii) Have the greatest matched or in-kind funding; and

(iii) Will be implemented by a sponsor with a successful record of project implementation.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) For fiscal year 2000, the board may authorize the interagency review team to evaluate, rank, and make funding decisions for categories of projects or activities or from funding sources provided for categories of projects or activities. In delegating such authority the board shall consider the review team's staff resources, procedures, and technical capacity to meet the purposes and objectives of this chapter. The board shall maintain general oversight of the team's exercise of such authority.

(5) The board shall seek the guidance of the technical review team to ensure that scientific principles and information are incorporated into the allocation standards and into proposed projects and activities. If the technical review team determines that a habitat project list complies with the critical pathways methodology under RCW 75.46.070, it shall provide substantial weight to the list's

project priorities when making determinations among applications for funding of projects within the area covered by the list.

(6) The board shall establish criteria for determining when block grants may be made to a lead entity or other recognized regional recovery entity consistent with one or more habitat project lists developed for that region. Where a lead entity has been established pursuant to RCW 75.46.060, the board may provide grants to the lead entity to assist in carrying out lead entity functions under this chapter, subject to available funding. The board shall determine an equitable minimum amount of funds for each region, and shall distribute the remainder of funds on a competitive basis.

(7) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condition of the board's receipt of the funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in the award of funding while recognizing the differences in state and legislative appropriation timing.

(8) The board may award a grant or loan for a salmon recovery project on private or public land when the landowner has a legal obligation under local, state, or federal law to perform the project, when expedited action provides a clear benefit to salmon recovery, and there will be harm to salmon recovery if the project is delayed. For purposes of this subsection, a legal obligation does not include a project required solely as a mitigation or a condition of permitting.

(9) The board may condition a grant or loan to include the requirement that property may only be transferred to a federal agency if the agency that will acquire the property agrees to comply with all terms of the grant or loan to which the project sponsor was obligated. Property acquired or improved by a project sponsor may be conveyed to a federal agency, but only if the agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated.

Passed the House February 10, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 16

[Substitute House Bill 2590]

POLLUTION LIABILITY INSURANCE--EXPIRATION DATES

AN ACT Relating to pollution liability insurance; amending RCW 70.148.900, 70.149.900, and 82.23A.902; amending 1998 c 245 s 178 (uncodified); and amending 1997 c 8 s 3 (uncodified).

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

Sec. 1. RCW 70.148.900 and 1995 c 12 s 2 are each amended to read as follows:

This chapter shall expire June 1, ~~((2001))~~ 2007.

Sec. 2. RCW 70.149.900 and 1995 c 20 s 14 are each amended to read as follows:

Sections 1 through 11 of this act shall expire June 1, ~~((2001))~~ 2007.

Sec. 3. RCW 82.23A.902 and 1996 c 88 s 3 are each amended to read as follows:

This chapter shall expire on June 1, ~~((2001))~~ 2007, coinciding with the expiration of chapter 70.148 RCW.

Sec. 4. 1998 e 245 s 178 (uncodified) is amended to read as follows:

Sections 114 and 115 of this act expire June 1, ~~((2001))~~ 2007.

Sec. 5. 1997 c 8 s 3 (uncodified) is amended to read as follows:

This act expires June 1, ~~((2001))~~ 2007.

Passed the House February 8, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 17

[House Bill 2607]

STATE PATROL RETIREMENT SYSTEM—CONTRIBUTION RATES

AN ACT Relating to decreasing the employee contribution rate for the Washington state patrol retirement system until June 30, 2001; amending RCW 43.43.300; and providing an expiration date.

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

Sec. 1. RCW 43.43.300 and 1965 c 8 s 43.43.300 are each amended to read as follows:

Beginning on July 1, ~~((1963))~~ 2000, every Washington state patrol employee who is a member of the retirement fund shall contribute ~~((seven))~~ three percent of his or her monthly salary, which shall be deducted from the compensation of each member on each and every payroll.

In event a member severs his or her connection with the Washington state patrol or is dismissed, the amount paid by the state of Washington shall remain in the retirement fund.

NEW SECTION. Sec. 2. Section 1 of this act expires June 30, 2001.

Passed the House February 10, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 18

[House Bill 2630]

WAREHOUSE RECEIPTS—SHARE CROP LEASE

AN ACT Relating to warehouse receipts; and amending RCW 79.12.600.

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

Sec. 1. RCW 79.12.600 and 1949 c 203 s 4 are each amended to read as follows:

When ~~((wheat, barley, rye, corn, other grain or peas))~~ crops that are covered by a share crop lease are harvested, the lessee shall give written notice to the commissioner that the crop is being harvested, and shall also give to the commissioner the name and address of the warehouse or elevator to which such ~~((grain or peas))~~ crops are sold or in which such ~~((grain or peas))~~ crops will be stored. The lessee shall also serve on the owner of such warehouse or elevator a written copy of so much of the lease as shall show the percentage of division of the proceeds of such crop as between lessee and lessor. The owner of such warehouse or elevator shall make out ~~((two warehouse receipts, one receipt showing the percentage of grain or peas belonging to the state and the other showing the percentage of grain or peas belonging to the lessee, and the respective amounts thereof))~~ a warehouse receipt, which receipt may be negotiable or nonnegotiable as directed by the state, showing the percentage of crops belonging to the state, and the respective gross and net amounts, grade, and location thereof, and shall deliver to the commissioner the receipt for the state's percentage of such ~~((grain or peas))~~ crops within ten days after ~~((he))~~ the owner has received such instructions.

Passed the House February 8, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 19

[House Bill 2722]

HIGHER EDUCATION EMPLOYEES—BARGAINING UNITS

AN ACT Relating to bargaining units for employees of institutions of higher education governed by chapter 41.56 RCW; and amending RCW 41.56.030 and 41.56.201.

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

Sec. 1. RCW 41.56.030 and 1999 c 217 s 2 are each 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, or (e) excluded from a bargaining unit under RCW 41.56.201(2)(a). 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.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 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; (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; (d) security forces established under RCW 43.52.520; (e) fire fighters as that term is defined in RCW 41.26.030; (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; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (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 Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

Sec. 2. RCW 41.56.201 and 1993 c 379 s 304 are each amended to read as follows:

(1) At any time after July 1, 1993, an institution of higher education and the exclusive bargaining representative of a bargaining unit of employees classified under chapter 28B.16 or 41.06 RCW as appropriate may exercise their option to have their relationship and corresponding obligations governed entirely by the provisions of this chapter by complying with the following:

(a) The parties will file notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement permitted by this section recognizing the notice of intent. The parties shall provide the notice to the ~~((higher education))~~ Washington personnel resources board or its successor and the commission;

(b) During the negotiation of an initial contract between the parties under this chapter, the parties' scope of bargaining shall be governed by this chapter and any disputes arising out of the collective bargaining rights and obligations under this subsection shall be determined by the commission. If the commission finds that the parties are at impasse, the notice filed under (a) of this subsection shall be void and have no effect; and

(c) On the first day of the month following the month during which the institution of higher education and the exclusive bargaining representative provide notice to the ~~((higher education))~~ Washington personnel resources board or its successor and the commission that they have executed an initial collective bargaining agreement recognizing the notice of intent filed under (a) of this subsection, chapter 28B.16 or 41.06 RCW as appropriate shall cease to apply to all employees in the bargaining unit covered by the agreement.

(2) All collective bargaining rights and obligations concerning relations between an institution of higher education and the exclusive bargaining representative of its employees who have agreed to exercise the option permitted by this section shall be determined under this chapter, subject to the following:

(a) The commission shall recognize, in its current form, the bargaining unit as certified by the ~~((higher education))~~ Washington personnel resources board or its successor ~~((and)).~~ For purposes of determining bargaining unit status, positions meeting the criteria established under RCW 41.06.070 or its successor shall be excluded from coverage under this chapter. An employer may exclude such positions from a bargaining unit at any time the position meets the criteria established under RCW 41.06.070 or its successor. The limitations on collective bargaining contained in RCW 41.56.100 shall not apply to that bargaining unit.

(b) If, on the date of filing the notice under subsection (1)(a) of this section, there is a union shop authorized for the bargaining unit under rules adopted by the ((higher education)) Washington personnel resources board or its successor, the union shop requirement shall continue in effect for the bargaining unit and shall be deemed incorporated into the collective bargaining agreement applicable to the bargaining unit.

(c) Salary increases negotiated for the employees in the bargaining unit shall be subject to the following:

(i) Salary increases shall continue to be appropriated by the legislature. The exclusive bargaining representative shall meet before a legislative session with the governor or governor's designee and the representative of the institution of higher education concerning the total dollar amount for salary increases and health care contributions that will be contained in the appropriations proposed by the governor under RCW 43.88.060;

(ii) The collective bargaining agreements may provide for salary increases from local efficiency savings that are different from or that exceed the amount or percentage for salary increases provided by the legislature in the omnibus appropriations act for the institution of higher education or allocated to the board of trustees by the state board for community and technical colleges, but the base for salary increases provided by the legislature under (c)(i) of this subsection shall include only those amounts appropriated by the legislature, and the base shall not include any additional salary increases provided under this subsection (2)(c)(ii);

(iii) Any provisions of the collective bargaining agreements pertaining to salary increases provided under (c)(i) of this subsection shall be subject to modification by the legislature. If any provision of a salary increase provided under (c)(i) of this subsection is changed by subsequent modification of the appropriations act by the legislature, both parties shall immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the modified provision.

(3) Nothing in this section may be construed to permit an institution of higher education to bargain collectively with an exclusive bargaining representative concerning any matter covered by: (a) Chapter 41.05 RCW, except for the related cost or dollar contributions or additional or supplemental benefits as permitted by chapter 492, Laws of 1993; or (b) chapter 41.32 or 41.40 RCW.

Passed the House February 9, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 20

[House Bill 2851]

FLOOD CONTROL MAINTENANCE—STATE FUNDING

AN ACT Relating to state participation in flood control maintenance; and amending RCW 86.26.100.

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

Sec. 1. RCW 86.26.100 and 1991 c 322 s 8 are each amended to read as follows:

State participation in the cost of any flood control maintenance project shall be provided for by a written memorandum agreement between the director of ecology and the legislative authority of the county submitting the request, which agreement, among other things, shall state the estimated cost and the percentage thereof to be borne by the state. In no instance, except on emergency projects, shall the state's share exceed ~~((one-half))~~ seventy-five percent of the total cost of the project, to include project planning and design. Grants for cost sharing feasibility studies for new flood control projects shall not exceed fifty percent of the matching funds that are required by the federal government, and shall not exceed twenty-five percent of the total costs of the feasibility study. However, grants to prepare a comprehensive flood control management plan required under RCW 86.26.050 shall not exceed seventy-five percent of the full planning costs, but not to exceed amounts for either purpose specified in rule and regulation by the department of ecology.

Passed the House February 10, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 21

[Engrossed Substitute House Bill 2884]

CHILD RELOCATION—NOTICE—STANDARDS

AN ACT Relating to relocation of children; amending RCW 26.09.260, 26.26.160, and 26.10.190; adding new sections to chapter 26.09 RCW; and creating new sections.

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

NEW SECTION. **Sec. 1.** By this act, the legislature intends to supersede the state supreme court's decisions *In Re the Marriage of Littlefield*, 133 Wn.2d 39 (1997), and *In Re the Marriage of Pape*, Docket No. 67527-9, December 23, 1999.

NEW SECTION. **Sec. 2. DEFINITIONS.** The definitions in this section apply throughout sections 2 through 18 of this act and RCW 26.09.260 unless the context clearly requires otherwise.

(1) "Court order" means a temporary or permanent parenting plan, custody order, visitation order, or other order governing the residence of a child under this title.

(2) "Relocate" means a change in principal residence either permanently or for a protracted period of time.

NEW SECTION. Sec. 3. APPLICABILITY. (1) The provisions of this act apply to a court order regarding residential time or visitation with a child issued:

- (a) After the effective date of this act; and
- (b) Before the effective date of this act, if the existing court order does not expressly govern relocation of the child.

(2) To the extent that a provision of this act conflicts with the express terms of a court order existing prior to the effective date of this act, then this act does not apply to those terms of that order governing relocation of the child.

NEW SECTION. Sec. 4. GRANT OF AUTHORITY. When entering or modifying a court order, the court has the authority to allow or not allow a person to relocate the child.

NEW SECTION. Sec. 5. NOTICE REQUIREMENT. Except as provided in section 8 of this act, a person with whom the child resides a majority of the time shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate. Notice shall be given as prescribed in sections 6 and 7 of this act.

NEW SECTION. Sec. 6. NOTICE—CONTENTS AND DELIVERY. (1) Except as provided in sections 7 and 8 of this act, the notice of an intended relocation of the child must be given by:

- (a) Personal service or any form of mail requiring a return receipt; and
- (b) No less than:
 - (i) Sixty days before the date of the intended relocation of the child; or
 - (ii) No more than five days after the date that the person knows the information required to be furnished under subsection (2) of this section, if the person did not know and could not reasonably have known the information in sufficient time to provide the sixty-days' notice, and it is not reasonable to delay the relocation.

(2)(a) The notice of intended relocation of the child must include: (i) An address at which service of process may be accomplished during the period for objection; (ii) a brief statement of the specific reasons for the intended relocation of the child; and (iii) a notice to the nonrelocating person that an objection to the intended relocation of the child or to the relocating person's proposed revised residential schedule must be filed with the court and served on the opposing person within thirty days or the relocation of the child will be permitted and the residential schedule may be modified pursuant to section 12 of this act. The notice shall not be deemed to be in substantial compliance for purposes of section 9 of this act unless the notice contains the following statement: "THE RELOCATION OF THE CHILD WILL BE PERMITTED AND THE PROPOSED REVISED RESIDENTIAL SCHEDULE MAY BE CONFIRMED UNLESS, WITHIN THIRTY DAYS, YOU FILE A PETITION AND MOTION WITH THE COURT

TO BLOCK THE RELOCATION OR OBJECT TO THE PROPOSED REVISED RESIDENTIAL SCHEDULE AND SERVE THE PETITION AND MOTION ON THE PERSON PROPOSING RELOCATION AND ALL OTHER PERSONS ENTITLED BY COURT ORDER TO RESIDENTIAL TIME OR VISITATION WITH THE CHILD."

(b) Except as provided in sections 7 and 8 of this act, the following information shall also be included in every notice of intended relocation of the child, if available:

(i) The specific street address of the intended new residence, if known, or as much of the intended address as is known, such as city and state;

(ii) The new mailing address, if different from the intended new residence address;

(iii) The new home telephone number;

(iv) The name and address of the child's new school and day care facility, if applicable;

(v) The date of the intended relocation of the child; and

(vi) A proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation with the child, if any.

(3) A person required to give notice of an intended relocation of the child has a continuing duty to promptly update the information required with the notice as that new information becomes known.

NEW SECTION. Sec. 7. NOTICE—RELOCATION WITHIN THE SAME SCHOOL DISTRICT. (1) When the intended relocation of the child is within the school district in which the child currently resides the majority of the time, the person intending to relocate the child, in lieu of notice prescribed in section 6 of this act, may provide actual notice by any reasonable means to every other person entitled to residential time or visitation with the child under a court order.

(2) A person who is entitled to residential time or visitation with the child under a court order may not object to the intended relocation of the child within the school district in which the child currently resides the majority of the time, but he or she retains the right to move for modification under RCW 26.09.260.

NEW SECTION. Sec. 8. LIMITATION OF NOTICES. (1) If a person intending to relocate the child is entering a domestic violence shelter due to the danger imposed by another person, notice may be delayed for twenty-one days. This section shall not be construed to compel the disclosure by any domestic violence shelter of information protected by confidentiality except as provided by RCW 70.123.075 or equivalent laws of the state in which the shelter is located.

(2) If a person intending to relocate the child is a participant in the address confidentiality program pursuant to chapter 40.24 RCW or has a court order which permits the party to withhold some or all of the information required by section 6(2)(b) of this act, the confidential or protected information is not required to be given with the notice.

(3) If a person intending to relocate the child is relocating to avoid a clear, immediate, and unreasonable risk to the health or safety of a person or the child, notice may be delayed for twenty-one days.

(4) A person intending to relocate the child who believes that his or her health or safety or the health or safety of the child would be unreasonably put at risk by notice or disclosure of certain information in the notice may request an ex parte hearing with the court to have all or part of the notice requirements waived. If the court finds that the health or safety of a person or a child would be unreasonably put at risk by notice or the disclosure of certain information in the notice, the court may:

(a) Order that the notice requirements be less than complete or waived to the extent necessary to protect confidentiality or the health or safety of a person or child; or

(b) Provide such other relief as the court finds necessary to facilitate the legitimate needs of the parties and the best interests of the child under the circumstances.

(5) This section does not deprive a person entitled to residential time or visitation with a child under a court order the opportunity to object to the intended relocation of the child or the proposed revised residential schedule before the relocation occurs.

NEW SECTION. Sec. 9. FAILURE TO GIVE NOTICE. (1) The failure to provide the required notice is grounds for sanctions, including contempt if applicable.

(2) In determining whether a person has failed to comply with the notice requirements for the purposes of this section, the court may consider whether:

(a) The person has substantially complied with the notice requirements;

(b) The court order in effect at the time of the relocation was issued prior to the effective date of this act and the person substantially complied with the notice requirements, if any, in the existing order;

(c) A waiver of notice was granted;

(d) A person entitled to receive notice was substantially harmed; and

(e) Any other factor the court deems relevant.

(3) A person entitled to file an objection to the intended relocation of the child may file such objection whether or not the person has received proper notice.

NEW SECTION. Sec. 10. OBJECTION TO RELOCATION OR PROPOSED REVISED RESIDENTIAL SCHEDULE. (1) A party objecting to the intended relocation of the child or the relocating parent's proposed revised residential schedule shall do so by filing the objection with the court and serving the objection on the relocating party and all other persons entitled by court order to residential time or visitation with the child by means of personal service or mailing by any form of mail requiring a return receipt to the relocating party at the address designated for service on the notice of intended relocation and to other parties requiring notice at their mailing address. The objection must be filed and

served, including a three-day waiting period if the objection is served by mail, within thirty days of receipt of the notice of intended relocation of the child. The objection shall be in the form of: (a) A petition for modification of the parenting plan pursuant to relocation; or (b) other court proceeding adequate to provide grounds for relief.

(2) Unless the special circumstances described in section 8 of this act apply, the person intending to relocate the child shall not, without a court order, change the principal residence of the child during the period in which a party may object. The order required under this subsection may be obtained ex parte. If the objecting party notes a court hearing to prevent the relocation of the child for a date not more than fifteen days following timely service of an objection to relocation, the party intending to relocate the child shall not change the principal residence of the child pending the hearing unless the special circumstances described in section 8(3) of this act apply.

(3) The administrator for the courts shall develop a standard form, separate from existing dissolution or modification forms, for use in filing an objection to relocation of the child or objection of the relocating person's proposed revised residential schedule.

NEW SECTION. Sec. 11. REQUIRED PROVISION IN RESIDENTIAL ORDERS. Unless waived by court order, after the effective date of this act, every court order shall include a clear restatement of the provisions in sections 5 through 10 of this act.

NEW SECTION. Sec. 12. FAILURE TO OBJECT. (1) Except for good cause shown, if a person entitled to object to the relocation of the child does not file an objection with the court within thirty days after receipt of the relocation notice, then the relocation of the child shall be permitted.

(2) A nonobjecting person shall be entitled to the residential time or visitation with the child specified in the proposed residential schedule included with the relocation notice.

(3) Any person entitled to residential time or visitation with a child under a court order retains his or her right to move for modification under RCW 26.09.260.

(4) If a person entitled to object to the relocation of the child does not file an objection with the court within thirty days after receipt of the relocation notice, a person entitled to residential time with the child may not be held in contempt of court for any act or omission that is in compliance with the proposed revised residential schedule set forth in the notice given.

(5) Any party entitled to residential time or visitation with the child under a court order may, after thirty days have elapsed since the receipt of the notice, obtain ex parte and file with the court an order modifying the residential schedule in conformity with the relocating party's proposed residential schedule specified in the notice upon filing a copy of the notice and proof of service of such notice. A party may obtain ex parte and file with the court an order modifying the residential schedule in conformity with the proposed residential schedule specified

in the notice before the thirty days have elapsed if the party files a copy of the notice, proof of service of such notice, and proof that no objection will be filed.

NEW SECTION. Sec. 13. TEMPORARY ORDERS. (1) The court may grant a temporary order restraining relocation of the child, or ordering return of the child if the child's relocation has occurred, if the court finds:

(a) The required notice of an intended relocation of the child was not provided in a timely manner and the nonrelocating party was substantially prejudiced;

(b) The relocation of the child has occurred without agreement of the parties, court order, or the notice required by this act; or

(c) After examining evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the court will not approve the intended relocation of the child or no circumstances exist sufficient to warrant a relocation of the child prior to a final determination at trial.

(2) The court may grant a temporary order authorizing the intended relocation of the child pending final hearing if the court finds:

(a) The required notice of an intended relocation of the child was provided in a timely manner or that the circumstances otherwise warrant issuance of a temporary order in the absence of compliance with the notice requirements and issues an order for a revised schedule for residential time with the child; and

(b) After examining the evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the court will approve the intended relocation of the child.

NEW SECTION. Sec. 14. BASIS FOR DETERMINATION. The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:

(1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;

(2) Prior agreements of the parties;

(3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;

(4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;

(5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;

(6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

(7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;

(8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;

(9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

(10) The financial impact and logistics of the relocation or its prevention; and

(11) For a temporary order, the amount of time before a final decision can be made at trial.

NEW SECTION. Sec. 15. FACTOR NOT TO BE CONSIDERED. In determining whether to permit or restrain the relocation of the child, the court may not admit evidence on the issue of whether the person seeking to relocate the child will forego his or her own relocation if the child's relocation is not permitted or whether the person opposing relocation will also relocate if the child's relocation is permitted. The court may admit and consider such evidence after it makes the decision to allow or restrain relocation of the child and other parenting, custody, or visitation issues remain before the court, such as what, if any, modifications to the parenting plan are appropriate and who the child will reside with the majority of the time if the court has denied relocation of the child and the person is relocating without the child.

NEW SECTION. Sec. 16. OBJECTIONS BY NONPARENTS. A court may not restrict the right of a parent to relocate the child when the sole objection to the relocation is from a third party, unless that third party is entitled to residential time or visitation under a court order and has served as the primary residential care provider to the child for a substantial period of time during the thirty-six consecutive months preceding the intended relocation.

NEW SECTION. Sec. 17. SANCTIONS. The court may sanction a party if it finds that a proposal to relocate the child or an objection to an intended relocation or proposed revised residential schedule was made to harass a person, to interfere in bad faith with the relationship between the child and another person entitled to residential time or visitation with the child, or to unnecessarily delay or needlessly increase the cost of litigation.

NEW SECTION. Sec. 18. PRIORITY FOR HEARING. A hearing involving relocations or intended relocations of children shall be accorded priority on the court's motion calendar and trial docket.

Sec. 19. RCW 26.09.260 and 1999 c 174 s 1 are each amended to read as follows:

(1) Except as otherwise provided in subsections (4), (5), ~~((7))~~ (6), (8), and ((9)) (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the ~~((nonprimary residential)) child and the parent ((and a child))~~ with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the ~~((nonprimary residential)) parent ((at the time the petition for modification is filed))~~ with whom the child does not reside a majority of the time, and further, the court

finds that it is in the best interests of the child to increase residential time with the ~~((nonprimary-residential))~~ parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the ~~((motion))~~ petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in sections 2 through 18 of this act. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A ~~((nonprimary-residential))~~ parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

~~((7))~~ (8) If a ~~((nonprimary-residential))~~ parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

~~((8))~~ (9) A ~~((nonprimary))~~ parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

~~((9))~~ (10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

~~((+0))~~ (11) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

Sec. 20. RCW 26.26.160 and 1992 c 229 s 8 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section the court has continuing jurisdiction to prospectively modify a judgment and order for future education and future support, and with respect to matters listed in RCW 26.26.130 (3) and ~~((+4))~~ (5), and RCW 26.26.150(2) upon showing a substantial change of circumstances. The procedures set forth in RCW 26.09.175 shall be used in modification proceedings under this section.

(2) A judgment or order entered under this chapter may be modified without a showing of substantial change of circumstances upon the same grounds as RCW 26.09.170 permits support orders to be modified without a showing of a substantial change of circumstance.

(3) The court may modify a parenting plan or residential provisions adopted pursuant to RCW 26.26.130~~((+6))~~ (7) in accordance with the provisions of chapter 26.09 RCW.

(4) The court shall hear and review petitions for modifications of a parenting plan, custody order, visitation order, or other order governing the residence of a child, and conduct any proceedings concerning a relocation of the residence where the child resides a majority of the time, pursuant to chapter 26.09 RCW.

Sec. 21. RCW 26.10.190 and 1989 c 375 s 24 are each amended to read as follows:

~~(1) ((The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the custodian and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the custodian established by the prior decree unless:~~

~~— (a) The custodian agrees to the modification;~~

~~— (b) The child has been integrated into the family of the petitioner with the consent of the custodian; or~~

~~— (c) The child's present environment is detrimental to his or her physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.))~~ The court shall hear and review petitions for modifications of a parenting plan, custody order, visitation order, or other order governing the residence of a child, and conduct any proceedings concerning a relocation of the residence where the child resides a majority of the time, pursuant to chapter 26.09 RCW.

(2) If the court finds that a motion to modify a prior custody decree has been brought in bad faith, the court shall assess the attorney's fees and court costs of the custodian against the petitioner.

NEW SECTION. **Sec. 22.** Captions used in this act are not any part of the law.

NEW SECTION. **Sec. 23.** Sections 2 through 18 of this act are each added to chapter 26.09 RCW and codified with the subchapter heading "Notice requirements and standards for parental relocation."

Passed the House February 14, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 22

[Substitute House Bill 2899]

WORKPLACE SAFETY—HOSPITALS

AN ACT Relating to workplace safety in state hospitals; amending RCW 72.23.010; adding new sections to chapter 72.23 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:

(1) Workplace safety is of paramount importance in state hospitals for patients and the staff that treat them;

(2) Based on an analysis of workers' compensation claims, the department of labor and industries reports that state hospital employees face high rates of workplace violence in Washington state;

(3) State hospital violence is often related to the nature of the patients served, people who are both mentally ill and too dangerous for treatment in their home community, and people whose behavior is driven by elements of mental illness including desperation, confusion, delusion, or hallucination;

(4) Patients and employees should be assured a reasonably safe and secure environment in state hospitals;

(5) The state hospitals have undertaken efforts to assure that patients and employees are safe from violence, but additional personnel training and appropriate safeguards may be needed to prevent workplace violence and minimize the risk and dangers affecting people in state hospitals; and

(6) Duplication and redundancy should be avoided so as to maximize resources available for patient care.

Sec. 2. RCW 72.23.010 and 1981 c 136 s 99 are each amended to read as follows:

~~((As used in this chapter, the following terms shall have the following meanings:))~~ The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Court" means the superior court of the state of Washington.

(2) "Department" means the department of social and health services.

(3) "Employee" means an employee as defined in RCW 49.17.020.

(4) "Licensed physician" means an individual permitted to practice as a physician under the laws of the state, or a medical officer, similarly qualified, of the government of the United States while in this state in performance of his or her official duties.

(5) "Mentally ill person" (~~shall~~) means any person who, pursuant to the definitions contained in RCW 71.05.020, as a result of a mental disorder presents a likelihood of serious harm to others or himself or herself or is gravely disabled.

(6) "Patient" (~~shall~~) means a person under observation, care, or treatment in a state hospital, or a person found mentally ill by the court, and not discharged from a state hospital, or other facility, to which such person had been ordered hospitalized.

~~("Licensed physician" shall mean an individual permitted to practice as a physician under the laws of the state, or a medical officer, similarly qualified, of the government of the United States while in this state in performance of his official duties.)~~

(7) "Resident" means a resident of the state of Washington.

(8) "Secretary" means the secretary of social and health services.

(9) "State hospital" (~~shall~~) means any hospital, including a child study and treatment center, operated and maintained by the state of Washington for the care of the mentally ill.

(10) "Superintendent" (~~shall~~) means the superintendent of a state hospital.

~~("Court" shall mean the superior court of the state of Washington.~~

~~"Resident" shall mean a resident of the state of Washington.)~~

(11) "Violence" or "violent act" means any physical assault or attempted physical assault against an employee or patient of a state hospital.

Wherever used in this chapter, the masculine shall include the feminine and the singular shall include the plural.

NEW SECTION. Sec. 3. (1) By November 1, 2000, each state hospital shall develop a plan, for implementation by January 1, 2001, to reasonably prevent and protect employees from violence at the state hospital. The plan shall be developed with input from the state hospital's safety committee, which includes representation from management, unions, nursing, psychiatry, and key function staff as appropriate. The plan shall address security considerations related to the following items, as appropriate to the particular state hospital, based upon the hazards identified in the assessment required under subsection (2) of this section:

- (a) The physical attributes of the state hospital including access control, egress control, door locks, lighting, and alarm systems;
- (b) Staffing, including security staffing;
- (c) Personnel policies;
- (d) First aid and emergency procedures;
- (e) Reporting violent acts, taking appropriate action in response to violent acts, and follow-up procedures after violent acts;

(f) Development of criteria for determining and reporting verbal threats;
(g) Employee education and training; and
(h) Clinical and patient policies and procedures including those related to smoking; activity, leisure, and therapeutic programs; communication between shifts; and restraint and seclusion.

(2) Before the development of the plan required under subsection (1) of this section, each state hospital shall conduct a security and safety assessment to identify existing or potential hazards for violence and determine the appropriate preventive action to be taken. The assessment shall include, but is not limited to analysis of data on violence and worker's compensation claims during at least the preceding year, input from staff and patients such as surveys, and information relevant to subsection (1)(a) through (h) of this section.

(3) In developing the plan required by subsection (1) of this section, the state hospital may consider any guidelines on violence in the workplace or in the state hospital issued by the department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, medicare, and state hospital accrediting organizations.

(4) The plan must be evaluated, reviewed, and amended as necessary, at least annually.

NEW SECTION. Sec. 4. By July 1, 2001, and at least annually thereafter, as set forth in the plan developed under section 3 of this act, each state hospital shall provide violence prevention training to all its affected employees as determined by the plan. Initial training shall occur prior to assignment to a patient unit, and in addition to his or her ongoing training as determined by the plan. The training may vary by the plan and may include, but is not limited to, classes, videotapes, brochures, verbal training, or other verbal or written training that is determined to be appropriate under the plan. The training shall address the following topics, as appropriate to the particular setting and to the duties and responsibilities of the particular employee being trained, based upon the hazards identified in the assessment required under section 3 of this act:

- (1) General safety procedures;
- (2) Personal safety procedures and equipment;
- (3) The violence escalation cycle;
- (4) Violence-predicting factors;
- (5) Obtaining patient history for patients with violent behavior or a history of violent acts;
- (6) Verbal and physical techniques to de-escalate and minimize violent behavior;
- (7) Strategies to avoid physical harm;
- (8) Restraining techniques;
- (9) Documenting and reporting incidents;
- (10) The process whereby employees affected by a violent act may debrief;
- (11) Any resources available to employees for coping with violence;

- (12) The state hospital's workplace violence prevention plan;
- (13) Use of the intershift reporting process to communicate between shifts regarding patients who are agitated; and
- (14) Use of the multidisciplinary treatment process or other methods for clinicians to communicate with staff regarding patient treatment plans and how they can collaborate to prevent violence.

NEW SECTION. Sec. 5. Beginning no later than July 1, 2000, each state hospital shall keep a record of any violent act against an employee or a patient occurring at the state hospital. Each record shall be kept for at least five years following the act reported during which time it shall be available for inspection by the department of labor and industries upon request. At a minimum, the record shall include:

- (1) Necessary information for the state hospital to comply with the requirements of chapter 49.17 RCW related to employees that may include:
 - (a) A full description of the violent act;
 - (b) When the violent act occurred;
 - (c) Where the violent act occurred;
 - (d) To whom the violent act occurred;
 - (e) Who perpetrated the violent act;
 - (f) The nature of the injury;
 - (g) Weapons used;
 - (h) Number of witnesses; and
 - (i) Action taken by the state hospital in response to the violence; and
- (2) Necessary information for the state hospital to comply with current and future expectations of the joint commission on hospital accreditation related to violence perpetrated upon patients which may include:
 - (a) The nature of the violent act;
 - (b) When the violent act occurred;
 - (c) To whom it occurred; and
 - (d) The nature and severity of any injury.

NEW SECTION. Sec. 6. Failure of a state hospital to comply with this chapter shall subject the hospital to citation under chapter 49.17 RCW.

NEW SECTION. Sec. 7. A state hospital needing assistance to comply with sections 3 through 5 of this act may contact the department of labor and industries for assistance. The state departments of labor and industries, social and health services, and health shall collaborate with representatives of state hospitals to develop technical assistance and training seminars on plan development and implementation, and shall coordinate their assistance to state hospitals.

NEW SECTION. Sec. 8. The department shall provide an interim report on the progress of the plan development to the legislature by July 1, 2000, and a copy of the completed plan by November 1, 2000. The department shall thereafter

provide an annual report to the legislature on its efforts to reduce violence in the state hospitals not later than September 1st of each year.

NEW SECTION. Sec. 9. Sections 3 through 8 of this act are each added to chapter 72.23 RCW.

Passed the House February 11, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 23

[Engrossed Senate Bill 5152]

PUBLIC EMPLOYEE'S COLLECTIVE BARGAINING—APPOINTED PERSONNEL

AN ACT Relating to clarifying who are appointed personnel for the purpose of public employees' collective bargaining; and amending RCW 41.56.030 and 36.27.040.

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

Sec. 1. RCW 41.56.030 and 1999 c 217 s 2 are each 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 as a member of a multimember board, commission, or committee, whether appointed 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 (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of ((d)) (e) 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.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 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; (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; (d) security forces established under RCW 43.52.520; (e) fire fighters as that term is defined in RCW 41.26.030; (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; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (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 Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

Sec. 2. RCW 36.27.040 and 1975 1st ex.s. c 19 s 2 are each amended to read as follows:

The prosecuting attorney may appoint one or more deputies who shall have the same power in all respects as their principal. Each appointment shall be in writing, signed by the prosecuting attorney, and filed in the county auditor's office. Each deputy thus appointed shall have the same qualifications required of the prosecuting attorney, except that such deputy need not be a resident of the county in which he serves. The prosecuting attorney may appoint one or more special

deputy prosecuting attorneys upon a contract or fee basis whose authority shall be limited to the purposes stated in the writing signed by the prosecuting attorney and filed in the county auditor's office. Such special deputy prosecuting attorney shall be admitted to practice as an attorney before the courts of this state but need not be a resident of the county in which he serves and shall not be under the legal disabilities attendant upon prosecuting attorneys or their deputies except to avoid any conflict of interest with the purpose for which he has been engaged by the prosecuting attorney. The prosecuting attorney shall be responsible for the acts of his deputies and may revoke appointments at will.

Two or more prosecuting attorneys may agree that one or more deputies for any one of them may serve temporarily as deputy for any other of them on terms respecting compensation which are acceptable to said prosecuting attorneys. Any such deputy thus serving shall have the same power in all respects as if he were serving permanently.

The provisions of chapter 39.34 RCW shall not apply to such agreements.

The provisions of RCW 41.56.030(2) shall not be interpreted to permit a prosecuting attorney to alter the at-will relationship established between the prosecuting attorney and his or her appointed deputies by this section for a period of time exceeding his or her term of office. Neither shall the provisions of RCW 41.56.030(2) require a prosecuting attorney to alter the at-will relationship established by this section.

Passed the Senate February 9, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 24

[Senate Bill 6138]

INTEREST—DISCLAIMERS

AN ACT Relating to disclaimers of interests; and amending RCW 11.86.051.

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

Sec. 1. RCW 11.86.051 and 1989 c 34 s 5 are each amended to read as follows:

(1) A beneficiary may not disclaim an interest if:

~~((1))~~ (a) The beneficiary has accepted the interest or a benefit thereunder;

~~((2))~~ (b) The beneficiary has assigned, conveyed, encumbered, pledged, or otherwise transferred the interest, or has contracted therefor;

~~((3))~~ (c) The interest has been sold or otherwise disposed of pursuant to judicial process; or

~~((4))~~ (d) The beneficiary has waived the right to disclaim in writing. The written waiver of the right to disclaim also is binding upon all persons claiming through or under the beneficiary.

(2) Notwithstanding the provisions of subsection (1)(a) through (c) of this section, a beneficiary's receipt of a benefit from property shall not necessarily bar such beneficiary's disclaimer of an interest in the same property when, prior to the date of the transfer of the interest to be disclaimed, the beneficiary already owned an interest in such property in joint tenancy, as community property, or otherwise. Any such receipt, in the absence of clear and convincing evidence to the contrary, shall be presumed to be an enjoyment or use of the interest the beneficiary already owned, and only after such interest and any benefit from such interest have been exhausted, shall the beneficiary be deemed to have received or accepted any part of the interest to be disclaimed.

Passed the Senate February 8, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 25

[Substitute Senate Bill 6147]

STATE PARKS GIFT FOUNDATION

AN ACT Relating to state parks; and adding a new chapter to Title 79A RCW.

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

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

(1) State parks are a valuable asset to the people of the state of Washington, contributing to their health, education, and well-being;

(2) Well maintained state parks are an attraction and contribute significantly to the economic well-being of the state of Washington;

(3) Well maintained state parks encourage the appreciation of the natural resources and natural beauty of the state of Washington;

(4) There is an increasing demand for more state parks and more state parks services;

(5) There are individuals and groups who desire to contribute to the continued vitality of the state parks system;

(6) Providing a tax-deductible method for individuals and groups to contribute is an effective way of increasing available funds to improve the state parks system; and

(7) It is in the public interest to create a nonprofit foundation to provide such a method for individuals and groups to contribute to the preservation, restoration, and enhancement of the state parks system.

NEW SECTION. Sec. 2. The purpose of the Washington state parks gift foundation is to solicit support for the state parks system, cooperate with other organizations, and to encourage gifts to support and improve the state parks.

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

(1) "Foundation" means the Washington state parks gift foundation, created in section 4 of this act.

(2) "State parks" means that system of parks administered by the commission under this title.

(3) "Eligible grant recipients" includes any and all of the activities of the commission in carrying out the provisions of this title.

(4) "Eligible projects" means any project, action, or part of any project or action that serves to preserve, restore, improve, or enhance the state parks.

NEW SECTION. Sec. 4. (1) By September 1, 2000, the commission shall file articles of incorporation in accordance with the Washington nonprofit corporation act, chapter 24.03 RCW, to establish the Washington state parks gift foundation. The foundation shall not be an agency, instrumentality, or political subdivision of the state and shall not disburse public funds.

(2) The foundation shall have a board of directors consisting of up to fifteen members. Initial members of the board shall be appointed by the governor and collectively have experience in business, charitable giving, outdoor recreation, and parks administration. Initial appointments shall be made by September 30, 2000. Subsequent board members shall be elected by the general membership of the foundation.

(3) Members of the board shall serve three-year terms, except for the initial terms, which shall be staggered by the governor to achieve a balanced mix of terms on the board. Members of the board may serve up to a maximum of three terms. At the end of a term, a member may continue to serve until a successor has been elected.

NEW SECTION. Sec. 5. (1) As soon as practicable, the board of directors shall organize themselves and the foundation suitably to carry out the duties of the foundation, including achieving federal tax-exempt status.

(2) The foundation shall actively solicit contributions from individuals and groups for the benefit of the state parks.

(3) The foundation shall develop criteria for guiding themselves in either the creation of an endowment, or the making of grants to eligible grant recipients and eligible projects in the state parks, or both.

(4) A competitive grant process shall be conducted at least annually by the foundation to award funds to the state parks. Competitive grant applications shall only be submitted to the foundation by the commission. The process shall be started as soon as practicable. Grants shall be awarded to eligible projects consistent with the criteria developed by the foundation and shall be available only for state parks use on eligible projects.

NEW SECTION. Sec. 6. Money provided to the state parks by the foundation shall not be used to supplant preexisting funding sources.

NEW SECTION. Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act constitute a new chapter in Title 79A RCW.

Passed the Senate February 14, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 26

[Substitute Senate Bill 6182]

SENTENCING

AN ACT Relating to the effect of changes in law on sentencing provisions; adding a new section to chapter 9.94A RCW; and creating a new section.

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

NEW SECTION. Sec. 1. This act is intended to cure any ambiguity that might have led to the Washington supreme court's decision in *State v. Cruz*, Cause No. 67147-8 (October 7, 1999). A decision as to whether a prior conviction shall be included in an individual's offender score should be determined by the law in effect on the day the current offense was committed. This act is also intended to clarify the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives.

NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW to read as follows:

Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed.

Passed the Senate February 15, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 27

[Senate Bill 6206]

FIREARM VIOLATIONS—SCHOOL NOTICE

AN ACT Relating to notification to schools of firearm violations by students; and amending RCW 13.04.155.

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

Sec. 1. RCW 13.04.155 and 1997 c 266 s 7 are each amended to read as follows:

(1) Whenever a minor enrolled in any common school is convicted in adult criminal court, or adjudicated or entered into a diversion agreement with the juvenile court on any of the following offenses, the court must notify the principal of the student's school of the disposition of the case, after first notifying the parent or legal guardian that such notification will be made:

- (a) A violent offense as defined in RCW 9.94A.030;
- (b) A sex offense as defined in RCW 9.94A.030;
- (c) Inhaling toxic fumes under chapter 9.47A RCW;
- (d) A controlled substances violation under chapter 69.50 RCW;
- (e) A liquor violation under RCW 66.44.270; and
- (f) Any crime under chapters 9.41, 9A.36, 9A.40, 9A.46, and 9A.48 RCW.

(2) The principal must provide the information received under subsection (1) of this section to every teacher of any student who qualifies under subsection (1) of this section and any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record. The principal must provide the information to teachers and other personnel based on any written records that the principal maintains or receives from a juvenile court administrator or a law enforcement agency regarding the student.

(3) Any information received by a principal or school personnel under this section is confidential and may not be further disseminated except as provided in RCW 28A.225.330, other statutes or case law, and the family and educational and privacy rights act of 1994, 20 U.S.C. Sec. 1232g et seq.

Passed the Senate February 7, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 28

[Senate Bill 6223]

SENTENCING REFORM ACT—REORGANIZATION—TECHNICAL CORRECTIONS

AN ACT Relating to reorganization of, and technical, clarifying, nonsubstantive amendments to, community supervision and sentencing provisions; amending RCW 9.94A.190, 9.94A.390, 9.94A.130, 9.94A.210, 9.94A.370, 9.94A.383, 9.94A.400, 9.94A.410, 9.94A.137, 9.94A.135, 9.94A.180, 9.94A.185, 9.94A.145, 18.155.010, 18.155.020, 18.155.030, 46.61.524, and 9.94A.395; reenacting and amending RCW 9.94A.030, 9.94A.120, 9.94A.310, 9.94A.360, 9.94A.440, 9.94A.150, 9.94A.140, 9.94A.142, and 9.94A.040; adding new sections to chapter 9.94A RCW; creating new sections; providing an effective date; and providing an expiration date.

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

PART I
General Provisions

NEW SECTION. Sec. 1. The sentencing reform act has been amended many times since its enactment in 1981. While each amendment promoted a valid public purpose, some sections of the act have become unduly lengthy and repetitive. The legislature finds that it is appropriate to adopt clarifying amendments to make the act easier to use and understand.

The legislature does not intend this act to make, and no provision of this act shall be construed as making, a substantive change in the sentencing reform act.

The legislature does intend to clarify that persistent offenders are not eligible for extraordinary medical placement.

Sec. 2. RCW 9.94A.030 and 1999 c 352 s 8, 1999 c 197 s 1, and 1999 c 196 s 2 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department (~~(of corrections)~~), means that the department, either directly or through a collection agreement authorized by RCW 9.94A.145, 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 offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.120 (~~((5), (6), (7), (8), (10), or (11);))~~ (2)(b), sections 18 through 25 of this act, or RCW 9.94A.383, served in the community subject to controls placed on the offender's movement and activities by the department (~~(of corrections)~~). For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(5) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under (~~(RCW 9.94A.120(11))~~) section 25 of this act, as established by the (~~(sentencing guidelines)~~) commission or the legislature under RCW 9.94A.040, for crimes committed on or after July 1, 2000.

(6) "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 release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(7) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "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).))~~ Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. 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.

(9) "Confinement" means total or partial confinement ~~((as defined in this section))~~.

(10) "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.

(11) ~~((("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.~~

~~—(12))~~ "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. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

~~((13))~~ (12) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (a) whether the defendant has been placed on probation and the length and terms

thereof; and (b) whether the defendant has been incarcerated and the length of incarceration.

~~((14))~~ (13) "Day fine" means a fine imposed by the sentencing ~~((judge))~~ court 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.

~~((15))~~ (14) "Day reporting" means a program of enhanced supervision designed to monitor the ~~((defendant's))~~ offender's daily activities and compliance with sentence conditions, and in which the ~~((defendant))~~ offender is required to report daily to a specific location designated by the department or the sentencing ~~((judge))~~ court.

~~((16))~~ (15) "Department" means the department of corrections.

~~((17))~~ (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 release~~((=))~~ can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

~~((18))~~ (17) "Disposable earnings" means that part of the earnings of an ~~((individual))~~ offender 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.

(18) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under section 19 of this act.

(19) "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.

(20) "Earned release" means earned release from confinement as provided in RCW 9.94A.150.

~~((20))~~ (21) "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.

~~((21))~~ (22) "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.

~~((22))~~ (23) "Fine(s)" means ~~((the requirement that the offender pay))~~ a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time ~~((to the court))~~.

~~((23))~~ (24) "First-time offender" means any person who ~~((is convicted of a felony (a) not classified as a violent offense or a sex offense under this chapter, or (b) 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 flunitrazepam classified in Schedule IV, 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, 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))~~ has no prior convictions for a felony and is eligible for the first-time offender waiver under section 18 of this act.

~~((24))~~ (25) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

~~((25))~~ (26) "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 RCW 38.52.430.

(27) "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 9A.4A.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;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

~~((26))~~ (28) "Nonviolent offense" means an offense which is not a violent offense.

~~((27))~~ (29) "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 is under superior court jurisdiction under RCW 13.04.030 or 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.

~~((28))~~ (30) "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))~~.

~~((29))~~ (31) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) 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; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation; or (C) an attempt to commit any crime listed in this subsection ~~((29))~~ (31)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under ~~((subsection-29))~~(b)(i)

of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under ~~((subsection (29))~~(b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

~~((30))~~ (32) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((31))~~ (33) "Restitution" means ~~((the requirement that the offender pay))~~ a specific sum of money ~~((over a specific period of time to the court))~~ ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs. ~~((The imposition of a restitution order does not preclude civil redress.~~

~~—((32))~~ (34) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

~~((33))~~ (35) "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.

~~((34))~~ (36) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree(~~(:)~~);

(ii) Homicide by abuse(~~(:)~~);

(iii) Murder in the second degree(~~(:)~~);

(iv) Manslaughter in the first degree(~~(:)~~);

(v) Assault in the first degree(~~(:)~~);

(vi) Kidnapping in the first degree(~~(:or)~~);

(vii) Rape in the first degree(~~(:)~~);

(viii) Assault of a child in the first degree(~~(:)~~); or

(ix) 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.

~~((35))~~ "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((36))~~ (37) "Sex offense" means:

(a) A felony that is a violation of:

(i) Chapter 9A.44 RCW ~~((;))~~ other than RCW 9A.44.130 ~~((+0), or)~~ (11);

(ii) RCW 9A.64.020 ~~((or))~~;

(iii) RCW 9.68A.090; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(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 sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135; or

(d) 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.

~~((37))~~ (38) "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.

~~((38))~~ (39) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(40) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(41) "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.

~~((39))~~ (42) "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.

~~((40))~~ (43) "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.

~~((41))~~ (44) "Violent offense" means:

(a) Any of the following felonies ~~((, as now existing or hereafter amended))~~:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony ~~((;))~~;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony(:);

(iii) Manslaughter in the first degree(:);

(iv) Manslaughter in the second degree(:);

(v) Indecent liberties if committed by forcible compulsion(:);

(vi) Kidnapping in the second degree(:);

(vii) Arson in the second degree(:);

(viii) Assault in the second degree(:);

(ix) Assault of a child in the second degree(:);

(x) Extortion in the first degree(:);

(xi) Robbery in the second degree(:);

(xii) Drive-by shooting(:);

(xiii) Vehicular assault(:); and

(xiv) 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.

~~((42)) (45) "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, or sanctioned under RCW 9.94A.205, are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (36) of this section are not eligible for the work crew program.~~

~~((43)) (46) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.137 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.~~

~~((44)) (47) "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.))~~

NEW SECTION. Sec. 3. For purposes of judicial and criminal justice forms promulgated under this chapter and related to corrections and sentencing, the terms "offender" and "defendant" may be used interchangeably without substantive effect.

This section expires July 1, 2005.

Sec. 4. RCW 9.94A.190 and 1995 c 108 s 4 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))~~ offender or a member of the ~~((defendant's))~~ offender'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))~~ Notwithstanding any other provision of this section, a sentence~~((s))~~ imposed pursuant to ~~((RCW 9.94A.120(6)))~~ section 19 of this act which ~~((have))~~ has a standard 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.

PART II
Sentencing Determinations

Sec. 5. RCW 9.94A.120 and 1999 c 324 s 2, 1999 c 197 s 4, 1999 c 196 s 5, and 1999 c 147 s 3 are each reenacted and amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this ~~((section))~~ chapter.

~~((1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section;))~~ (2)(a) 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 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: (a) in the case of an offender in need of emergency medical treatment; (b) 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; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.150(4).~~

~~—(5)(a) 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 a term of community supervision or~~

~~community custody as specified in (b) of this subsection, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:~~

- ~~—(i) Devote time to a specific employment or occupation;~~
- ~~—(ii) Undergo available outpatient treatment for up to the period specified in (b) of this subsection, or inpatient treatment not to exceed the standard range of confinement for that offense;~~
- ~~—(iii) Pursue a prescribed, secular course of study or vocational training;~~
- ~~—(iv) Remain within prescribed geographical boundaries and notify the community corrections officer prior to any change in the offender's address or employment;~~
- ~~—(v) Report as directed to a community corrections officer; or~~
- ~~—(vi) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work;~~

~~—(b) The terms and statuses applicable to sentences under (a) of this subsection are:~~

- ~~—(i) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and~~
- ~~—(ii) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this subsection (5) is subject to conditions and sanctions as authorized in this subsection (5) and in subsection (11)(b) and (c) of this section;~~

~~—(c) The department shall discharge from community supervision any offender sentenced under this subsection (5) before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court;~~

~~—(6)(a) An offender is eligible for the special drug offender sentencing alternative if:~~

- ~~—(i) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);~~
- ~~—(ii) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;~~
- ~~—(iii) For a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, 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; and~~

~~—(iv) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order.~~

~~—(b) If 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.~~

~~—The court shall also impose:~~

~~—(i) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;~~

~~—(ii) Crime-related prohibitions including a condition not to use illegal controlled substances; and~~

~~—(iii) A requirement to submit to urinalysis or other testing to monitor that status.~~

~~—The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives 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:~~

~~—(A) Devote time to a specific employment or training;~~

~~—(B) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;~~

~~—(C) Report as directed to a community corrections officer;~~

~~—(D) Pay all court-ordered legal financial obligations;~~

~~—(E) Perform community service work;~~

~~—(F) Stay out of areas designated by the sentencing judge;~~

~~—(G) Such other conditions as the court may require such as affirmative conditions.~~

~~—(c) If the offender violates any of the sentence conditions in (b) of this subsection, a violation hearing shall be held by the department unless waived by the offender. If the department finds that conditions have been willfully violated,~~

the offender may be reclassified to serve the remaining balance of the original sentence:

~~—(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.~~

~~—(e) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to earned early release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned early release time.~~

~~—(7)) as provided in the following sections and as applicable in the case:~~

~~(i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.310;~~

~~(ii) Sections 22 and 23 of this act, relating to community placement;~~

~~(iii) Sections 24 and 25 of this act, relating to community custody;~~

~~(iv) RCW 9.94A.383, relating to community custody for offenders whose term of confinement is one year or less;~~

~~(v) Section 6 of this act, relating to persistent offenders;~~

~~(vi) Section 7 of this act, relating to mandatory minimum terms;~~

~~(vii) Section 18 of this act, relating to the first-time offender waiver;~~

~~(viii) Section 19 of this act, relating to the drug offender sentencing alternative;~~

~~(ix) Section 20 of this act, relating to the special sex offender sentencing alternative;~~

~~(x) RCW 9.94A.390, relating to exceptional sentences;~~

~~(xi) RCW 9.94A.400, relating to consecutive and concurrent sentences.~~

~~(b) If a standard sentence range has not been established for the ((defendant's) offender's) crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community service work; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in ((subsection (1)(b) and (e))) section 24 (2) and (3) of this ((section)) act; 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 as provided in RCW 9.94A.390.

~~((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 sex 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 eleven 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 custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section;~~

~~— (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; and~~
- ~~— (C) Sex offenders sentenced under this special sex offender sentencing alternative are not eligible to accrue any earned release time while serving a suspended sentence.~~
- ~~— (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 custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.~~
- ~~— (v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a)~~

or refer the violation to the court and recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection:

— (vi) The court may revoke the suspended sentence at any time during the period of community custody 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 custody shall be credited to the offender if the suspended sentence is revoked.

— (vii) Except as provided in (a)(viii) 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.

— (viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (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 (8) and the rules adopted by the department of health.

— (ix) For purposes of this subsection (8), "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.

— (x) If the defendant was less than eighteen years of age when the charge was filed, the state shall pay for the cost of initial evaluation and treatment.

— (b) 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 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 (8)(b) does not apply to any crime committed after July 1, 1990.~~
- ~~—(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.~~
- ~~—(d) Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department.~~
- ~~—(9)(a)(i) 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, but before July 25, 1999, 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 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.~~
- ~~—(ii) Except for persons sentenced under (b) of this subsection or subsection (10)(a) of this section, when a court sentences a person to a term of total confinement to the custody of the department of corrections for a violent offense, any crime against a person under RCW 9.94A.440(2), 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 25, 1999, but before July 1, 2000, 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 release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences the offender under this subsection (9)(a)(ii) 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 committed on or after July 1, 1990, but before June 6, 1996, or a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, but before July 1, 2000, 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 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 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 possess or consume controlled substances except pursuant to lawfully issued prescriptions;~~

~~—(iv) The offender shall pay supervision fees as determined by the department of corrections;~~

~~—(v) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement; and~~

~~—(vi) The offender shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the department.~~

~~—(c) As a part of any sentence imposed under (a) or (b) of this subsection, 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;~~

~~— (v) The offender shall comply with any crime-related prohibitions; or~~

~~— (vi) For an offender convicted of a felony sex offense against a minor victim after June 6, 1996, the offender shall comply with any terms and conditions of community placement imposed by the department of corrections relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.~~

~~— (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.~~

~~— (10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, but before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody 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 release in accordance with RCW 9.94A.150 (1) and (2).~~

~~— (b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section.~~

~~— (c) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.~~

~~— (11)(a) When a court sentences a person to the custody of the department of corrections for a sex offense, a violent offense, any crime against a person under~~

~~RCW 9.94A.140(2), or a felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody 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 release in accordance with RCW 9.94A.150 (1) and (2).~~

~~— (b) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in subsection (9)(b)(i) through (vi) of this section. The conditions may also include those provided for in subsection (9)(c)(i) through (vi) of this section. The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to (f) of this subsection. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.~~

~~— (c) If an offender violates conditions imposed by the court or the department pursuant to this subsection during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.205 and 9.94A.207.~~

~~— (d) Except for terms of community custody under subsection (8) of this section, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.~~

~~— (e) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the~~

sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

~~—(f) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (11)(f).~~

~~—(g) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (i) The crime of conviction; (ii) the offender's risk of reoffending; or (iii) the safety of the community.~~

~~—(12)) (3) 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.~~

~~((13)) (4) 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 for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. 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 unless the superior court extends the criminal judgment an additional ten years. If the legal financial obligations including crime victims' assessments are not paid during the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years)) it shall be imposed as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145. ((If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. 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.

~~---~~(14)) (5) Except as provided under RCW 9.94A.140(~~((1))~~) (4) and 9.94A.142(~~((1))~~) (4), a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

~~((15))~~ All offenders sentenced to terms involving community supervision, community service, community placement, community custody, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

~~---~~(a) The instructions shall include, at a minimum, 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.

~~---~~(b) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may additionally require the offender to participate in rehabilitative programs or otherwise perform affirmative conduct, and to obey all laws.

~~---~~The conditions authorized under this subsection (15)(b) may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10) of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) or (11) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) or (11)(c) of this section.

~~---~~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.

~~—(16) All offenders sentenced to terms involving community supervision, community service, community custody, 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.~~

~~—(17))~~ (6) 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.

~~((18) 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).~~

~~—(19))~~ (7) 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)) as provided in RCW 9.94A.140 and 9.94A.142.

~~((20))~~ (8) 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)) crime-related prohibitions and affirmative conditions as provided in this chapter.

~~((21))~~ (9) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

~~((22))~~ (10) In any sentence of partial confinement, the court may require the ((defendant)) offender 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.

~~(((23) 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.~~

~~—(24))~~ (11) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, community placement, or community custody, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

~~(((25)(a) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this section shall be conducted only by sex offender treatment providers certified by the department of health under chapter 18.155 RCW unless the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified providers are available for treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; (iii) the evaluation and treatment plan comply with the rules adopted by the department of health; or (iv) the treatment provider is employed by the department. A treatment provider selected by an offender who is not certified by the department of health shall consult with a certified provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified provider.~~

~~—(b) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.)~~

NEW SECTION. Sec. 6. PERSISTENT OFFENDERS. Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this section may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under RCW 9.94A.150 (1), (2), (3), (4), (6), (8), or (9), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) In the case of an offender in need of emergency medical treatment; or (2) 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.

NEW SECTION. Sec. 7. MANDATORY MINIMUM TERMS. (1) The following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.390:

(a) 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.

(b) 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.

(c) 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.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.150, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) 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; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.150(4).

Sec. 8. RCW 9.94A.390 and 1999 c 330 s 1 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Whenever a sentence outside the standard sentence 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 sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence 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).

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 this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.210 (2) through (6).

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 ((f)). Voluntary use of drugs or alcohol is excluded((g)).

(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 violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) 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.

(e) 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;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(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).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127.

(g) 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.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) 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.

(j) 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.

(k) The offense resulted in the pregnancy of a child victim of rape.

(l) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

Sec. 9. RCW 9.94A.130 and 1999 c 143 s 12 are each amended to read as follows:

The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under ~~((RCW 9.94A.120(8)(a)))~~ section 20 of this act, the special ~~((sexual))~~ sex offender sentencing alternative, whose sentence may be suspended.

Sec. 10. RCW 9.94A.210 and 1989 c 214 s 1 are each amended to read as follows:

(1) A sentence within the standard sentence range for the offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under ~~((RCW 9.94A.120(5)))~~ section 18 of this act shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing ~~((judge))~~ court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing ~~((judges))~~ courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

Sec. 11. RCW 9.94A.310 and 1999 c 352 s 2 and 1999 c 324 s 3 are each reenacted and amended to read as follows:

(1) TABLE I
Sentencing Grid

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XVI	Life Sentence without Parole/Death Penalty									
XV	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
XIV	14y4m 123- 220	15y4m 134- 234	16y2m 144- 244	17y 154- 254	17y11m 165- 265	18y9m 175- 275	20y5m 195- 295	22y2m 216- 316	25y7m 257- 357	29y 298- 397
XIII	12y 123- 164	13y 134- 178	14y 144- 192	15y 154- 205	16y 165- 219	17y 175- 233	19y 195- 260	21y 216- 288	25y 257- 342	29y 298- 397
XII	9y 93- 123	9y11m 102- 136	10y9m 111- 147	11y8m 120- 160	12y6m 129- 171	13y5m 138- 184	15y9m 162- 216	17y3m 178- 236	20y3m 209- 277	23y3m 240- 318
XI	7y6m 78- 102	8y4m 86- 114	9y2m 95- 125	9y11m 102- 136	10y9m 111- 147	11y7m 120- 158	14y2m 146- 194	15y5m 159- 211	17y11m 185- 245	20y5m 210- 280
X	5y 51- 68	5y6m 57- 75	6y 62- 82	6y6m 67- 89	7y 72- 96	7y6m 77- 102	9y6m 98- 130	10y6m 108- 144	12y6m 129- 171	14y6m 149- 198
IX	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	5y 51- 68	5y6m 57- 75	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144	12y6m 129- 171
VIII	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144
VII	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116
VI	13m 12+- 14	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y6m 46- 61	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102
V	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y 41- 54	5y 51- 68	6y 62- 82	7y 72- 96
IV	6m 3- 9	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y2m 53- 70	6y2m 63- 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	2-	3-	4-	12+-	14-	17-	22-	33-	43-
	Days	6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	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)) standard sentence 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)) standard sentence range 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)) standard sentence range for felony crimes committed after July 23, 1995, 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 is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. 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)) standard sentence range 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 statutory 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 statutory 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 statutory 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 July 23, 1995, 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 run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.150(4).

(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, drive-by shooting, 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))~~ standard sentence range under this section exceeds the statutory maximum sentence 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))~~. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the ~~((presumptive))~~ standard sentence range for felony crimes committed after July 23, 1995, 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 9.41.010 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 is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than 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 deadly weapon enhancements, the following additional times shall be added to the ~~((presumptive))~~ standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Six months for any felony defined under any law as a class C felony or with a statutory 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 July 23, 1995, 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 run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.150(4).

(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, drive-by shooting, 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))~~ standard sentence range under this section exceeds the statutory maximum sentence 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))~~. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the ~~((presumptive))~~ standard sentence range 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))~~ standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(1) (i) or (ii) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(1) (iii), (iv), and (v);

(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.

(6) An additional twenty-four months shall be added to the ~~((presumptive))~~ standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

(7) An additional two years shall be added to the ~~((presumptive))~~ standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

Sec. 12. RCW 9.94A.370 and 1999 c 143 s 16 are each amended to read as follows:

(1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the ~~((presumptive-sentencing))~~ standard sentence range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings or for those offenses enumerated in RCW 9.94A.310(4) that were committed in a state correctional facility or county jail shall be added to the entire ~~((presumptive))~~ standard sentence range. The court may impose any sentence within the range that it deems appropriate. All ~~((presumptive))~~ standard sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the ~~((presumptive))~~ standard sentence range except upon stipulation or when specifically provided for in RCW 9.94A.390(2) (d), (e), (g), and (h).

Sec. 13. RCW 9.94A.383 and 1999 c 196 s 10 are each amended to read as follows:

On all sentences of confinement for one year or less, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in ~~((RCW 9.94A.120(1)-(b) and (c)))~~ sections 25 and 26 of this act. An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll.

Sec. I4. RCW 9.94A.400 and 1999 c 352 s 11 are each amended to read as follows:

(1)(a) Except as provided in (b) or (c) 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)(g) 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 applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(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 standard 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 standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard 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.

(c) If an offender is convicted under RCW 9.41.040 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, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a 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 for conviction 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)))~~ 9.94A.390, 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.

Sec. 15. RCW 9.94A.360 and 1999 c 352 s 10 and 1999 c 331 s 1 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) 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 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 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 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) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior 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 or prior juvenile offenses for which sentences were served consecutively, 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 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;

(ii) 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 (5), "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.

(6) 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. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11) or (12) 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.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), or (12) 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.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, 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.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) 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.

(11) 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 count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction.

(12) 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 (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(13) 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.

(14) 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.

(15) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) 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.

(16) If the present conviction is for a sex offense, count priors as in subsections (7) through (15) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(17) If the present conviction is for an offense committed while the offender was under community placement, add one point.

Sec. 16. RCW 9.94A.410 and 1986 c 257 s 29 are each amended to read as follows:

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 crime, and multiplying the range by 75 percent.

~~(In calculating an offender score, count each prior conviction as if the present conviction were for the completed offense. When these convictions are used as criminal history, score them the same as a completed crime.)~~

PART III

Prosecutorial Standards

Sec. 17. RCW 9.94A.440 and 1999 c 322 s 6 and 1999 c 196 s 11 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.

(a) 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(8))) section 20 of this act.

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 Manslaughter

2nd Degree Manslaughter

1st Degree Kidnapping

2nd Degree Kidnapping

1st Degree Assault

2nd Degree Assault

3rd Degree Assault

1st Degree Assault of a Child

2nd Degree Assault of a Child

3rd Degree Assault of a Child

1st Degree Rape

((1st Degree Robbery))

2nd Degree Rape

3rd Degree Rape

1st Degree Rape of a Child

2nd Degree Rape of a Child

3rd Degree Rape of a Child

1st Degree Robbery

2nd Degree Robbery

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

2nd 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)

Stalking

Custodial Assault

No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b) and (c))

No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))

Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and (5))

Counterfeiting (if a violation of RCW 9.16.035(4))

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson
 1st Degree Escape
2nd Degree Escape
 2nd Degree Burglary
 1st Degree Theft
2nd Degree Theft
 1st Degree Perjury
2nd Degree Perjury
 1st Degree Introducing Contraband
2nd Degree Introducing Contraband
 1st Degree Possession of Stolen Property
2nd 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)
1st Degree Theft((s)) of Livestock
2nd Degree Theft of Livestock
 ALL OTHER UNCLASSIFIED FELONIES
 Selection of Charges/Degree of Charge

(i) 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.

(ii) 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.

(b) GUIDELINES/COMMENTARY:

(i) 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:

- (A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (B) The completion of necessary laboratory tests; and
- (C) 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.

(ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

- (A) Probable cause exists to believe the suspect is guilty; and
- (B) The suspect presents a danger to the community or is likely to flee if not apprehended; or
- (C) 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.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

- (A) Polygraph testing;
- (B) Hypnosis;
- (C) Electronic surveillance;
- (D) Use of informants.
- (iv) 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.

- (v) 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.

PART IV

Sentencing Alternatives

NEW SECTION. Sec. 18. FIRST-TIME OFFENDER WAIVER. (1) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have never participated in a program of deferred prosecution for a felony, and who are convicted of a felony that is not:

- (a) Classified as a violent offense or a sex offense under this chapter;
- (b) 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 flunitrazepam classified in Schedule IV;
- (c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2); or
- (d) 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.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard 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 a term of community supervision or community custody as specified in subsection (3) of this section, 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 the period specified in subsection (3) of this section, 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 community corrections officer prior to any change in the offender's address or employment;

(e) Report as directed to 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.

(3) The terms and statuses applicable to sentences under subsection (2) of this section are:

(a) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and

(b) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this section is subject to conditions and sanctions as authorized in this section and in section 25 (2) and (3) of this act.

(4) The department shall discharge from community supervision any offender sentenced under this section before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.

NEW SECTION. Sec. 19. DRUG OFFENDER SENTENCING ALTERNATIVE. (1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(b) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;

(c) For a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, 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; and

(d) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order.

(2) If the standard sentence range is greater than one year and the sentencing court determines that the offender is eligible for this alternative and that the

offender and the community will benefit from the use of the alternative, the judge may waive imposition of a sentence within the standard sentence 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 sentence 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.

The court shall also impose:

(a) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(b) Crime-related prohibitions including a condition not to use illegal controlled substances; and

(c) A requirement to submit to urinalysis or other testing to monitor that status.

The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives 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 court;

(vii) Such other conditions as the court may require such as affirmative conditions.

(3) If the offender violates any of the sentence conditions in subsection (2) of this section, a violation hearing shall be held by the department unless waived by the offender. If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

(4) 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.

(5) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing court. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned release time.

NEW SECTION. Sec. 20. SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider as defined in RCW 18.155.020.

(b) "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.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been 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;

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state; and

(c) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) 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 examiner shall be selected by the party making the motion. The offender 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.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this alternative is appropriate, the court shall then impose a sentence within the standard sentence range. If the sentence imposed is less than eleven 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 offender on community custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under section 26 of this act.

(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. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Up to six months of confinement, not to exceed the sentence range of confinement for that offense;

(b) Crime-related prohibitions;

(c) Require the offender to devote time to a specific employment or occupation;

(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;

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(g) Perform community service work; or

(h) Reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) 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.

(7) The sex offender treatment provider shall submit quarterly reports on the offender'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, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(8) Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. Either party may request, and the court may order, another evaluation regarding the advisability of termination from treatment. The offender shall pay the cost of any additional evaluation ordered unless the court finds the offender 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 custody, and either (b) terminate treatment, or (c) extend treatment for up to the remaining period of community custody.

(9) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(11) 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 unless 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; or

(b)(i) No certified providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(12) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

Sec. 21. RCW 9.94A.137 and 1999 c 197 s 5 are each amended to read as follows:

(1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of the uniform controlled substances act or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing ((judge)) court determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard sentence range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of supervision on community custody status as required by ((RCW 9.94A.120(9)(b))) section 22(4) of this act and authorized by ((RCW 9.94A.120(9)(e))) section 22(5) of this act; and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing ((judge)) court and shall be subject to all rules relating to earned ((early)) release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training.

PART V
Offenders in the Community

NEW SECTION. Sec. 22. COMMUNITY PLACEMENT. When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with RCW 9.94A.125 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under section 19 of this act.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.150, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section 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 release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community service, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

NEW SECTION. Sec. 23. COMMUNITY PLACEMENT FOR SPECIFIED OFFENDERS. Except for persons sentenced under section 22(2) or 24 of this act, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under section 19 of this act, committed on or after July 25, 1999, but before July 1, 2000, 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 release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences the offender under this section 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.

NEW SECTION. Sec. 24. COMMUNITY CUSTODY FOR SEX OFFENDERS. (1) When a court sentences a person to the custody of the department for an offense categorized as a sex offense, including those sex offenses also included in other offense categories, committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150, whichever is longer. The community custody 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 release.

(2) Unless a condition is waived by the court, the terms of community custody imposed under this section shall be the same as those provided for in section 22(4) of this act and may include those provided for in section 22(5) of this act. As part of any sentence that includes a term of community custody imposed under this section, the court shall also require the offender to comply with any conditions imposed by the department under section 26 of this act.

(3) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.

NEW SECTION. Sec. 25. COMMUNITY CUSTODY FOR SPECIFIED OFFENDERS. (1) When a court sentences a person to the custody of the department for a sex offense, a violent offense, any crime against persons under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW not sentenced under section 19 of this act, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.040 or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody 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 release in accordance with RCW 9.94A.150 (1) and (2).

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in section 22(4) of this act. The conditions may also include those provided for in section 22(5) of this act. The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense,

the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under section 26 of this act. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.205 and 9.94A.207.

(4) Except for terms of community custody under section 20 of this act, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative

review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community.

NEW SECTION. Sec. 26. SUPERVISION OF OFFENDERS. (1)(a) All offenders sentenced to terms involving community supervision, community service, community placement, community custody, or legal financial obligation shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

(b) The instructions shall include, at a minimum, 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.

(c) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (b) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals.

(d) For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may impose conditions as specified in section 25 of this act.

The conditions authorized under (c) of this subsection may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to section 24 of this act occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to section 24 or 25 of this act be continued beyond the expiration of the offender's term of community custody as authorized in section 25 (3) or (5) of this act.

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.

(2) No offender sentenced to terms involving community supervision, community service, community custody, or community placement under the supervision of the department may 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 violation process and sanctions

under RCW 9.94A.200, 9.94A.205, and 9.94A.207. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010.

Sec. 27. RCW 9.94A.135 and 1991 c 181 s 2 are each amended to read as follows:

Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules ~~((shall include the requirements that))~~ require the offender to work to the best of his or her abilities and ~~((that he or she))~~ provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

Work crew tasks shall be performed for a minimum of thirty-five hours per week. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.205, are eligible to participate on a work crew. Offenders sentenced for a sex offense are not eligible for the work crew program.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crew((s)) projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or

labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the ~~((department))~~ agency administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(1) The offender has diligently attempted but has been unable to obtain employment that ~~((provided))~~ provides the offender sufficient income to make such payment.

(2) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.

(5) Other extenuating circumstances as determined by the court.

Sec. 28. RCW 9.94A.150 and 1999 c 324 s 1 and 1999 c 37 s 1 are each reenacted and amended to read as follows:

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 administrator of a 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 July 23, 1995, 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) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against ~~((a))~~ persons where it is determined in accordance with RCW 9.94A.125 that the ~~((defendant))~~ offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, 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;

(b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned 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)(a) The secretary ~~((of corrections))~~ may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement ~~((under this subsection))~~.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time.

(5) 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;

(6) 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 himself or herself in the community;

(7) The governor may pardon any offender;

(8) The department (~~(of corrections)~~) may release an offender from confinement any time within ten days before a release date calculated under this section; and

(9) An offender may leave a correctional facility prior to completion of his or her 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))~~) section 7 of this act 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))~~) section 7 of this act, however persistent offenders are not eligible for extraordinary medical placement.

Sec. 29. RCW 9.94A.180 and 1999 c 143 s 15 are each amended to read as follows:

(1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030(~~((26))~~) (30) and 9.94A.135. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions (~~(during the period of partial confinement)~~) and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the (~~(state)~~) department (~~(of corrections)~~).

(3) 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.

Sec. 30. RCW 9.94A.185 and 1995 c 108 s 2 are each amended to read as follows:

- (1) Home detention may not be imposed for offenders convicted of:
- (a) ~~A~~ violent offense((:));
 - (b) ~~Any~~ sex offense((:));
 - (c) ~~Any~~ drug offense((:));
 - (d) ~~Reckless~~ burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050((:));
 - (e) ~~Assault~~ in the third degree as defined in RCW 9A.36.031((:));
 - (f) ~~Assault~~ of a child in the third degree((:));
 - (g) ~~Unlawful~~ imprisonment as defined in RCW 9A.40.040((:)); or
 - (h) ~~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-[section]))~~ section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

~~((+))~~ (2) 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))~~ (3) 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) ~~A~~ biding by the rules of the home detention program((:)); and

(c) ~~C~~ompliance 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.

PART VI

Legal Financial Obligations

Sec. 31. RCW 9.94A.145 and 1999 c 196 s 6 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, restitution shall be paid prior to any payments of other monetary obligations. 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 issued 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))~~ Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement 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. If restitution is ordered pursuant to RCW 9.94A.140~~((3))~~ (6) or 9.94A.142~~((3))~~ (6) to a victim of rape of a child ~~((and the))~~ or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.140~~((3))~~ (6) and 9.94A.142~~((3))~~ (6). All other legal financial 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. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. ~~((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 respond 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))~~ department may ~~((be required at the request of the department))~~ require the offender 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 respond 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))~~ shall 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))~~ is authorized, for any period of supervision ~~((be authorized to))~~, 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 purpose~~(s)~~ 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 for noncompliance as provided in RCW 9.94A.200 ~~((for noncompliance)), 9.94A.205, or 9.94A.207.~~

(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.

(12) The department may arrange for the collection of unpaid legal financial obligations through the county clerk, or through another entity if the clerk does not assume responsibility for collection. The costs for collection services shall be paid by the offender.

~~(13) Nothing in this chapter 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.~~

Sec. 32. RCW 9.94A.140 and 1997 c 121 s 3 and 1997 c 52 s 1 are each reenacted and amended to read as follows:

This section applies to offenses committed on or before July 1, 1985.

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within 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.

(2) 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.

(3) Except as provided in subsection ~~((3))~~ (6) of this section, 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))~~ offense.

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a 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. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence 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 ~~((of corrections))~~.

~~((2))~~ (5) 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 or as provided in subsection ~~((3))~~ (6) of this section. 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))~~ (6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting

pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a ~~((civil))~~ proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The ~~((defendant))~~ offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the ~~((defendant))~~ offender has satisfied support obligations under the superior court or administrative order but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

~~((4))~~ (7) In addition to any sentence that may be imposed, ~~((a defendant))~~ an offender 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.

~~((5))~~ (8) This section does not limit civil remedies or defenses available to the victim or ~~((defendant))~~ offender including support enforcement remedies for support ordered under subsection ~~((3))~~ (6) of this section for a child born as a result of a rape of a child victim. 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. 33. RCW 9.94A.142 and 1997 c 121 s 4 and 1997 c 52 s 2 are each reenacted and amended to read as follows:

This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection ~~((4))~~ (7) of this section. 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.

(2) 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.

(3) Except as provided in subsection ~~((3))~~ (6) of this section, 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.

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a 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. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence 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 ~~((of corrections))~~ for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period.

~~((2))~~ (5) 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 or as provided in subsection ~~((3))~~ (6) of this section 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))~~ (6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The ~~((defendant))~~ offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the ~~((defendant))~~ offender has satisfied support obligations under the superior court or administrative order but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

~~((4))~~ (7) Regardless of the provisions of subsections (1)~~((2), and (3))~~ through (6) 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.

~~((5))~~ (8) In addition to any sentence that may be imposed, ~~((a defendant))~~ an offender 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.

~~((6))~~ (9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or ~~((defendant))~~ offender including support enforcement remedies for support ordered under subsection ~~((3))~~ (6) of this section for a child born as a result of a rape of a child victim. 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.

~~((7) This section shall apply to offenses committed after July 1, 1985.))~~

PART VII
Sex Offender Treatment

NEW SECTION. **Sec. 34. SEX OFFENDER TREATMENT.** (1) When an offender commits any felony sex offense on or after July 1, 1987, and on or before July 1, 1990, 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 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 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:

- (a) Devote time to a specific employment or occupation;
- (b) 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;
- (c) Report as directed to the court and a community corrections officer;
- (d) 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.

Nothing in this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987.

(2) 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 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.

NEW SECTION. **Sec. 35. TRANSITION AND RELAPSE PREVENTION STRATEGIES.** Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk

assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department.

NEW SECTION. **Sec. 36. SEX OFFENDER TREATMENT.** (1) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this chapter shall be conducted only by sex offender treatment providers certified by the department of health under chapter 18.155 RCW unless the court or the department 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) the treatment provider is employed by the department; or (c)(i) no certified providers are available to provide treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of health. A treatment provider selected by an offender under (c) of this subsection, who is not certified by the department of health shall consult with a certified provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified provider.

(2) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

Sec. 37. RCW 18.155.010 and 1990 c 3 s 801 are each amended to read as follows:

The legislature finds that sex offender therapists who examine and treat sex offenders pursuant to the special sexual offender sentencing alternative under ~~((RCW 9.94A.120(7)(a)))~~ section 20 of this act and who may treat juvenile sex offenders pursuant to RCW 13.40.160, play a vital role in protecting the public from sex offenders who remain in the community following conviction. The legislature finds that the qualifications, practices, techniques, and effectiveness of sex offender treatment providers vary widely and that the court's ability to effectively determine the appropriateness of granting the sentencing alternative and monitoring the offender to ensure continued protection of the community is undermined by a lack of regulated practices. The legislature recognizes the right of sex offender therapists to practice, consistent with the paramount requirements of public safety. Public safety is best served by regulating sex offender therapists whose clients are being evaluated and being treated pursuant to ~~((RCW 9.94A.120(7)(a)))~~ section 20 of this act and RCW 13.40.160. This chapter shall be construed to require only those sex offender therapists who examine and treat sex offenders pursuant to ~~((RCW 9.94A.120(7)(a)))~~ section 20 of this act and RCW 13.40.160 to obtain a sexual offender treatment certification as provided in this chapter.

Sec. 38. RCW 18.155.020 and 1990 c 3 s 802 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Certified sex offender treatment provider" means a licensed, certified, or registered health professional who is certified to examine and treat sex offenders pursuant to ~~((RCW 9.94A.120(7)(a)))~~ section 20 of this act and RCW 13.40.160.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health.

(4) "Sex offender treatment provider" means a person who counsels or treats sex offenders accused of or convicted of a sex offense as defined by RCW 9.94A.030.

Sec. 39. RCW 18.155.030 and 1990 c 3 s 803 are each amended to read as follows:

(1) No person shall represent himself or herself as a certified sex offender treatment provider without first applying for and receiving a certificate pursuant to this chapter.

(2) Only a certified sex offender treatment provider may perform or provide the following services:

(a) Evaluations conducted for the purposes of and pursuant to ~~((RCW 9.94A.120(7)(a)))~~ section 20 of this act and RCW 13.40.160;

(b) Treatment of convicted sex offenders who are sentenced and ordered into treatment pursuant to ~~((RCW 9.94A.120(7)(a)))~~ section 20 of this act and adjudicated juvenile sex offenders who are ordered into treatment pursuant to RCW 13.40.160.

PART VIII

DASA Licensing Requirements

Sec. 40. RCW 46.61.524 and 1991 c 348 s 2 are each amended to read as follows:

(1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b) shall, as a condition of community supervision imposed under RCW 9.94A.383 or community placement imposed under ~~((RCW 9.94A.120(8)))~~ section 19 of this act, complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, as defined under RCW 46.61.516 that has been approved by the department of social and health services. This report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment

required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in chapter 348, Laws of 1991 requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.

(2) As provided for under RCW 46.20.285, the department shall revoke the license, permit to drive, or a nonresident privilege of a person convicted of vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522. The department shall determine the eligibility of a person convicted of vehicular homicide under RCW 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility or probation department, and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified.

PART IX

Miscellaneous

Sec. 41. RCW 9.94A.040 and 1999 c 352 s 1 and 1999 c 196 s 3 are each reenacted and amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, 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;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile 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 (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The office of the administrator for the courts shall provide the commission with available data on diversion and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(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) The standard sentence ranges of total and partial confinement under this chapter are 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, except that for murder in the second degree in seriousness level XIV

under RCW 9.94A.310, the minimum term in the range shall be no less than fifty 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.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under ~~((RCW 9.94A.120(11)))~~ section 25 of this act for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

Sec. 42. RCW 9.94A.395 and 1993 c 144 s 5 are each amended to read as follows:

(1) The sentencing court or the court's successor shall consider recommendations from the indeterminate sentence review board for resentencing ~~((defendants))~~ offenders convicted of murder if the indeterminate sentence review board advises the court of the following:

(a) The ~~((defendant))~~ offender was convicted for a murder committed prior to ~~((the effective date of RCW 9.94A.390(1)(h)))~~ July 23, 1989;

(b) RCW 9.94A.390(1)(h), if effective when the ~~((defendant))~~ offender committed the crime, would have provided a basis for the ~~((defendant))~~ offender to seek a mitigated sentence; and

(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the ~~((defendant))~~ offender for the murder, did not consider evidence that the victim subjected the ~~((defendant))~~ offender or the ~~((defendant's))~~ offender's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The court may resentence the ~~((defendant))~~ offender in light of RCW 9.94A.390(1)(h) and impose an exceptional mitigating sentence pursuant to that

provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the ~~((defendant))~~ offender committed the crime in response to abuse.

(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed.

NEW SECTION. Sec. 43. Part headings and section captions used in this act do not constitute any part of the law.

NEW SECTION. Sec. 44. Sections 3, 6, 7, 18 through 20, 22 through 26, and 34 through 36 of this act are each added to chapter 9.94A RCW.

NEW SECTION. Sec. 45. If any amendments to RCW 9.94A.120, or any sections enacted or affected by this act, are enacted in a 2000 legislative session that do not take cognizance of this act, the code reviser shall prepare a bill for introduction in the 2001 legislative session that incorporates any such amendments into the reorganization adopted by this act and corrects any incorrect cross-references.

NEW SECTION. Sec. 46. Sections 1 through 42 of this act take effect July 1, 2001.

NEW SECTION. Sec. 47. 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 February 12, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 29

[Senate Bill 6237]

CHILD SUPPORT—PROCESSING FEES

AN ACT Relating to processing fees deducted from earnings withheld due to child support; amending RCW 26.23.060; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 26.23.060 and 1998 c 160 s 8 are each amended to read as follows:

(1) The division of child support may issue a notice of payroll deduction:

(a) As authorized by a support order that contains a notice clearly stating that child support may be collected by withholding from earnings, wages, or benefits without further notice to the obligated parent; or

(b) After service of a notice containing an income-withholding provision under this chapter or chapter 74.20A RCW.

(2) The division of child support shall serve a notice of payroll deduction upon a responsible parent's employer or upon the employment security department for the state in possession of or owing any benefits from the unemployment compensation fund to the responsible parent pursuant to Title 50 RCW:

(a) In the manner prescribed for the service of a summons in a civil action;

(b) By certified mail, return receipt requested;

(c) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means; or

(d) By regular mail to a responsible parent's employer unless the division of child support reasonably believes that service of process in the manner prescribed in (a) or (b) of this subsection is required for initiating an action to ensure employer compliance with the withholding requirement.

(3) Service of a notice of payroll deduction upon an employer or employment security department requires the employer or employment security department to immediately make a mandatory payroll deduction from the responsible parent's unpaid disposable earnings or unemployment compensation benefits. The employer or employment security department shall thereafter deduct each pay period the amount stated in the notice divided by the number of pay periods per month. The payroll deduction each pay period shall not exceed fifty percent of the responsible parent's disposable earnings.

(4) A notice of payroll deduction for support shall have priority over any wage assignment, garnishment, attachment, or other legal process.

(5) The notice of payroll deduction shall be in writing and include:

(a) The name and social security number of the responsible parent;

(b) The amount to be deducted from the responsible parent's disposable earnings each month, or alternate amounts and frequencies as may be necessary to facilitate processing of the payroll deduction;

(c) A statement that the total amount withheld shall not exceed fifty percent of the responsible parent's disposable earnings;

(d) The address to which the payments are to be mailed or delivered; and

(e) A notice to the responsible parent warning the responsible parent that, despite the payroll deduction, the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as defined in RCW 74.20A.320.

(6) An informational copy of the notice of payroll deduction shall be mailed to the last known address of the responsible parent by regular mail.

(7) An employer or employment security department that receives a notice of payroll deduction shall make immediate deductions from the responsible parent's unpaid disposable earnings and remit proper amounts to the Washington state

support registry within seven working days of the date the earnings are payable to the responsible parent.

(8) An employer, or the employment security department, upon whom a notice of payroll deduction is served, shall make an answer to the division of child support within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the responsible parent is employed by or receives earnings from the employer or receives unemployment compensation benefits from the employment security department, whether the employer or employment security department anticipates paying earnings or unemployment compensation benefits and the amount of earnings. If the responsible parent is no longer employed, or receiving earnings from the employer, the answer shall state the present employer's name and address, if known. If the responsible parent is no longer receiving unemployment compensation benefits from the employment security department, the answer shall state the present employer's name and address, if known.

The returned answer or a payment remitted to the division of child support by the employer constitutes proof of service of the notice of payroll deduction in the case where the notice was served by regular mail.

(9) The employer (~~or employment security department~~) may deduct a processing fee from the remainder of the responsible parent's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 26.18.090. The processing fee may not exceed: (a) Ten dollars for the first disbursement made to the Washington state support registry; and (b) one dollar for each subsequent disbursement to the registry.

(10) The notice of payroll deduction shall remain in effect until released by the division of child support, the court enters an order terminating the notice and approving an alternate arrangement under RCW 26.23.050, or until the employer no longer employs the responsible parent and is no longer in possession of or owing any earnings to the responsible parent. The employer shall promptly notify the office of support enforcement when the employer no longer employs the parent subject to the notice. For the employment security department, the notice of payroll deduction shall remain in effect until released by the division of child support or until the court enters an order terminating the notice.

(11) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section when the responsible parent is receiving earnings or unemployment compensation in another state.

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

NEW SECTION. Sec. 3. 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 inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must 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. 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 takes effect immediately.

- Passed the Senate February 12, 2000.
- Passed the House February 29, 2000.
- Approved by the Governor March 17, 2000.
- Filed in Office of Secretary of State March 17, 2000.

CHAPTER 30

[Senate Bill 6275]

PUBLIC WORKS PROJECTS—LOAN AUTHORIZATION

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

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

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

- (1) Alderwood Water District—domestic water project—install approximately 14,000 feet of water line along with associated valves and fittings \$1,402,800
- (2) Annapolis Water District—domestic water project—construct well no. 21, and paint the salmonberry storage tanks \$744,300
- (3) Annapolis Water District—domestic water project—replace corroded water pipes in the Harold Drive and Gillette Avenue areas \$406,800
- (4) Asotin County Public Utility District—domestic water project—rebuild/replace wells 4 and 6. Update control systems for pumps, replace approximately 19,000 feet of water line, and paint three storage tanks \$1,620,000
- (5) City of Battle Ground—sanitary sewer project—locate and replace sections of the sewer lines that have failed \$1,400,000
- (6) Benton City—domestic water project—construct a zone 2 tank capable of holding 500,000 gallons of water, and the transmission lines and related equipment, install telemetry systems, chlorination systems, and all necessary housing, associated equipment, and instrumentation in three wells . . \$652,325
- (7) Benton County—road project—construct 7.5 miles of new roadway and realign 3 miles of existing roadway \$2,561,466

- (8) City of Bonney Lake—domestic water project—replace 11,000 linear feet of inadequate mains, fire hydrants, service lines to meters, roadway overlay, and install pressure-reducing valves and associated equipment \$723,800
- (9) City of Bremerton—storm sewer project—construct storm sewers in the Sinclair Inlet subbasin from 1st Street to the north and along Kitsap Way, North, and Arsenal Way subbasins \$4,195,800
- (10) City of Bremerton—storm sewer project—plan, design, and construct combined sewer overflow reduction facilities for Pine Road, Tracyton Beach, East Park, and Trenton Avenue basins \$2,804,200
- (11) City of Brewster—domestic water project—design and construct a new booster pump station, install associated equipment, telemetry devices, and water main. Construct new building to house the equipment \$137,900
- (12) City of Castle Rock—sanitary sewer project—design and construct a new headworks/influent structure and associated equipment, install alarm and telemetry system, a generator, and construct a new building to house new equipment and telemetry \$658,000
- (13) Chelan County Public Utility District—domestic water project—install new water mains, pressure-reducing station, associated equipment, create new pressure zone, install reservoir outfall piping, and a storm water overflow retention pond \$363,000
- (14) Clark Public Utilities—domestic water project—replace approximately 74,000 linear feet of water line in various parts of the service area \$2,100,000
- (15) Clark Public Utilities—sanitary sewer project—design new components and upgrades to the system, improve inlet piping, enlarge existing and construct new aeration basins, enlarge the digester, construct an additional clarifier, install ultraviolet disinfection system, install mixed media filters, and construct structures to accommodate these new facilities \$1,171,944
- (16) Covington Water District—domestic water project—develop a supply pipeline with the City of Tacoma, by purchasing water rights, constructing a 34-mile pipeline, improving the headworks diversion dam, construct an intertie with Seattle's water system, increase the capacity of the Howard Hanson Dam, expand the chlorination, fluoridation, and corrosion control facilities, and handle environmental enhancements \$7,000,000
- (17) Cowlitz County—sanitary sewer project—design and construct improvements to the sanitary sewer plant, including the construction of two new clarifiers, new lab/control building, and associated equipment \$680,480
- (18) Diking District No. 2 of Cowlitz County—storm sewer project—design and construct a new storm water pump station with an approximate capacity of 140 cubic feet per second \$2,293,200
- (19) City of East Wenatchee—road project—improve approximately 2,900 linear feet of 11th Street NE from Baker Avenue to Eastmont Avenue, by reconstructing roadway, curb, gutter, sidewalk, bus pullouts, storm drainage, and water mains.

- In addition, bicycle lanes, intersection illumination, signage, and related improvements will be made \$608,400
- (20) Town of Eatonville—sanitary sewer project—construct a two-cell batch reactor treatment plant sized for approximately 500,000 gallons per day. Ammonia treatment for a load of 100 pounds per day as required by the NPDES permit will be included. Ultraviolet light disinfection and construction of a force main pump station \$750,000
- (21) City of Enumclaw—sanitary sewer project—replace over 20,000 linear feet of sewer line along with inspections of pipe, geotechnical evaluations, design, and construction inspection of the lines \$3,749,400
- (22) City of Goldendale—sanitary sewer project—design and construct an ultraviolet light treatment process, and associated equipment and telemetry instrumentation \$2,124,500
- (23) City of Granite Falls—sanitary sewer project—construction of a secondary clarifier, mixers, an ultraviolet disinfection system, and associated equipment and telemetry \$440,000
- (24) Highline Water District—domestic water project—install approximately 22,500 linear feet of pipe, hydrants, valves, and associated equipment and material \$2,217,600
- (25) Highline Water District—domestic water project—construct two wells and install associated equipment and piping \$3,438,000
- (26) City of Kennewick—road project—improvements on three key arterials, South Vancouver Street, W. 19th Avenue, and 27th Avenue. These improvements will include storm drainage systems, sidewalks, bike lanes, and street and traffic lights. Water and sewer line upgrades will be made as well \$4,550,000
- (27) City of Kennewick—sanitary sewer project—install new aerators, PVC liners, replace underwater electrical cables, and remove biosolids \$2,450,000
- (28) King County Water District No. 49—domestic water project—replace approximately 23,000 linear feet of water line, several hundred residential service lines, fire hydrants, and install additional hydrants around the Blakley Manor subdivision and the 16th Avenue area \$1,401,300
- (29) King County Water District No. 90—domestic water project—replace approximately 11,700 feet of pipe, install new fire hydrants, water services, valves, and other appurtenances, as well as asbestos/cement overlay of the road surfaces \$965,542
- (30) King County Water District No. 90—domestic water project—install back-up generators for two pumps, install or repair existing motors and pumps in three stations, and upgrade electrical panels in six. Vaults will be replaced at a number of sites \$290,500
- (31) King County Water District No. 119—domestic water project—interconnect the district's two water distribution systems through a 7,000-foot water line. Install associated equipment and replace pump process with gravity feed process \$563,500

- (32) Kitsap County Sewer District No. 5—sanitary sewer project—install approximately 5,500 feet of sewer main and 3,000 feet of side sewer lines
 \$1,116,900
- (33) Lake Stevens Sewer District—sanitary sewer project—install a new ultraviolet light disinfection unit, redundant capacity and emergency power, new auxiliary generator, pump at the chlorine contact tank, new screens, and grit dumpster area roof, and replacement of headworks. The operations building will be expanded and minor site work will be completed to repair or replace pipes, water lines, and roadways. Sludge will be removed and disposed \$3,654,000
- (34) Lakehaven Utility District—sanitary sewer project—installation of ultraviolet light disinfection systems at two plants, associated modifications to the plants. Lakota plant will replace headworks, screens, and associated equipment
 \$1,575,700
- (35) Lewis County Water and Sewer District No. 6—domestic water project—construct a new water system for Lake Mayfield Village, including a 48,000-gallon, and a 60,000-gallon reservoir, a new booster pump, approximately 25,000 feet of water line, 20 hydrants, and more than 250 service connections. The project will also construct a new sewer collection system, new wastewater treatment plant, and an effluent outfall, along with associated equipment and controls
 \$400,000
- (36) Liberty Lake Sewer and Water District—sanitary sewer project—replace 2,600 feet of sewer line, and manholes \$302,252
- (37) Liberty Lake Sewer and Water District—domestic water project—construct a reservoir for the area, replace the three small pumps. Construct a 210,000-gallon storage tank, and install approximately 3,100 feet of transmission line and 1,700 feet of overflow pipe \$382,500
- (38) City of Long Beach—sanitary sewer project—install an ultraviolet light disinfection system, upgrade lift station from two pumps to three, modify headworks, and install an emergency generator \$180,000
- (39) City of Olympia—bridge project—Replace existing 4th Avenue Bridge with a three-lane bridge, which will include right-turn lanes both westbound and eastbound, two bike lanes, roadway approaching bridge will be modified, and a pedestrian link from Percival Landing to Heritage Park will be constructed. Utilities, sidewalks, and traffic controls will be upgraded \$6,721,144
- (40) Olympic View Water and Sewer District—domestic water project—replace approximately 4,000 feet of water line. Pressure valves and associated equipment and controls will be installed as warranted \$364,500
- (41) Olympic View Water and Sewer District—sanitary sewer project—rehabilitate approximately 3,225 feet of sewer line in four areas around Robin Hood Drive
 \$459,000
- (42) Pasadena Park Irrigation District—domestic water project—construct a 600,000-gallon reservoir along with associated piping to connect to the

- transmission line. Construct a new booster pump building with three pumps being installed and associated electronics and controls \$344,431
- (43) City of Pasco—sanitary sewer project—install approximately 37,000 feet of sewer line to connect homes, businesses, and the Port of Pasco with the treatment facility \$2,100,000
- (44) City of Port Angeles—road project—resurface approximately 9,500 feet of roadway. Bridge, expansion joints, and pile caps will be repaired or replaced. In addition, sidewalks, traffic controls, storm drainage, and other related improvements will be made to the Eighth Street corridor \$1,932,000
- (45) City of Port Angeles—domestic water project—construct and install three reservoir covers and add a disinfection system to one reservoir . . . \$1,168,300
- (46) City of Poulsbo—road project—restore and preserve Front Street and Lindvig Way by overlaying approximately 5,000 feet of road surface. The project includes sidewalks, storm drainage, traffic controls, replace approximately 3,000 feet of water main, and other related improvements \$1,527,300
- (47) City of Richland—domestic water project—replace approximately 100,000 feet of water line, hydrants, controls, side services, and other related improvements \$7,000,000
- (48) Sammamish Plateau Water and Sewer District—domestic water project—construct new well, install a pump, electronics, water treatment system, controls, and replacement of approximately 10,000 feet of water line \$902,195
- (49) City of Seattle—bridge project—replace critical components of the Ballard Bridge's mechanical-electrical system, install electrical controls, lighting, traffic controls, and other related equipment \$5,670,000
- (50) Shoreline Wastewater Management District—sanitary sewer project—repair or replace pumps, control systems, electronics, ventilation systems, valves and controls, and associated improvements to the lift stations \$823,500
- (51) Snohomish County—solid waste project—acquire additional land and demolish existing facility. Construct 42,000 square foot handling building. Roadways, storm drainage, parking, controls, and related facilities/equipment will be upgraded \$10,000,000
- (52) Soos Creek Water and Sewer District—sanitary sewer project—construct lift station 38, install approximately 4,500 feet of sewer pipe, associated controls, electronics, and other equipment. Lake Wilderness Trail will be restored as part of the project \$1,779,000
- (53) Southwest Suburban Sewer District—sanitary sewer project—the Salmon Creek and Miller Creek treatment plants will be upgraded by replacing coarse screening equipment, installing pump diffusers, and pumping stations. Salmon Creek outfall lines will be repaired as warranted, controls and related equipment and materials will be installed as needed \$1,861,300
- (54) City of Sumner—sanitary sewer project—project will upgrade the nitrogen removal process, improve pumping, install a new headworks, add clarifiers, centrifuge dewatering equipment, increase lab space, improve flood protection, and

install ultraviolet disinfection system. In addition, controls, electronics, and associated equipment and materials will be installed \$3,326,700

(55) City of Tenino—domestic water project—design and install corrosion control facility, and associated plumbing, controls, electronics, and buildings . \$80,500

(56) City of Tonasket—sanitary sewer project—construct new wastewater treatment facility, including new headworks, aeration basin, secondary clarifier, process building, ultraviolet light disinfection system, outfall line to the river, sludge storage, and lab facilities. In addition, associated equipment controls, electronics, and materials necessary to operate the plant will be installed \$2,380,000

(57) City of Union Gap—domestic water project—construct a new well capable of supplying 1,500 gallons per minute, along with the construction of a wellhouse. Install approximately 200 feet of transmission line, water treatment equipment, and associated controls, electronics, and materials \$724,129

(58) City of University Place—road project—widen approximately 3,500 feet of roadway to provide concrete curbs, gutters, sidewalks, bike lanes, and associated material. Improvements to storm drainage, and safety-related improvements, including street lighting, traffic controls, and signage \$960,000

(59) City of University Place—road project—construct approximately 7,400 feet of sidewalks, bikeways, improve storm drainage, and install any associated materials \$631,144

(60) City of University Place—road project—construct approximately 8,000 feet of sidewalks, bike lanes, improve storm drainage, and install safety features along roadway \$680,000

(61) Woodinville Water District—domestic water project—replace approximately 56,500 feet of water line, install valves, service lines, hydrants, controls, and other related facilities \$1,833,510

(62) Yakima County—road project—design, acquire right-of-way, and construct approximately 31.8 miles of gravel roads. Drainage facilities, traffic controls, signage, illumination, and related equipment will be installed \$7,000,000

(63) City of Yakima—road project—rehabilitate approximately 19 blocks of Yakima Avenue, including storm drainage, sidewalks, bike lanes, traffic controls, electronics, and related equipment. Several side streets will also be improved \$1,180,000

TOTAL \$123,524,762

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

Passed the Senate February 12, 2000.
 Passed the House February 29, 2000.
 Approved by the Governor March 17, 2000.
 Filed in Office of Secretary of State March 17, 2000.

CHAPTER 31

[Substitute Senate Bill 6276]

EMERGENCY MEDICAL SERVICE DISTRICTS—CITY OR TOWN INCLUSION—
GOVERNANCE

AN ACT Relating to authorizing inclusion of cities and towns within emergency medical service districts; and amending RCW 36.32.480.

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

Sec. 1. RCW 36.32.480 and 1979 ex.s. c 200 s 2 are each amended to read as follows:

(1) A county legislative authority may adopt an ordinance creating an emergency medical service district in all or a portion of the unincorporated area of the county and, pursuant to subsection (2) of this section, within the corporate limits of any city or town. The ordinance may only be adopted after a public hearing has been held on the creation of such a district and the county legislative authority makes a finding that it is in the public interest to create the district. ~~((The members of the county legislative authority shall be the governing body of the emergency medical service district.))~~

An emergency medical service district shall be a quasi-municipal corporation and an independent taxing "authority" within the meaning of Article 7, Section 1, Washington State Constitution. Emergency medical service districts shall also be "taxing authorities" within the meaning of Article 7, Section 2, Washington State Constitution.

An emergency medical service district shall have the authority to provide emergency medical services.

(2) When any part of a proposed emergency medical service district includes an area within the corporate limits of a city or town, the governing body of the city or town shall approve the inclusion, and the county governing body shall maintain a certified copy of the resolution of approval before adopting an ordinance including the area.

(3) The members of the county legislative authority shall compose the governing body of any emergency medical service district which is created within the county; PROVIDED, That where an emergency medical service district includes an area within the corporate limits of a city or town, the emergency medical service district may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The voters of an emergency medical service district must be registered voters residing within the service area.

Passed the Senate February 7, 2000.
Passed the House February 29, 2000.
Approved by the Governor March 17, 2000.
Filed in Office of Secretary of State March 17, 2000.

CHAPTER 32

[Substitute Senate Bill 6349]

WATER WELL DELEGATION--EXPIRATION DATE

AN ACT Relating to extending the expiration date of the water well delegation program; amending RCW 18.104.043; and providing an expiration date.

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

Sec. 1. RCW 18.104.043 and 1996 c 12 s 2 are each amended to read as follows:

(1) If requested in writing by the governing body of a local health district or county, the department by memorandum of agreement may delegate to the governing body the authority to administer and enforce the well tagging, sealing, and decommissioning portions of the water well construction program.

(2) The department shall determine whether a local health district or county that seeks delegation under this section has the resources, capability, and expertise, including qualified field inspectors, to administer the delegated program. If the department determines the local government has these resources, it shall notify well contractors, consultants, and operators of the proposal. The department shall accept written comments on the proposal for sixty days after the notice is mailed.

(3) If the department determines that a delegation of authority to a local health district or county to administer and enforce the well sealing and decommissioning portions of the water well construction program will enhance the public health and safety and the environment, the department and the local governing body may enter into a memorandum of agreement setting forth the specific authorities delegated by the department to the local governing body. The memorandum of agreement shall provide for an initial review of the delegation within one year and for periodic review thereafter.

(4) With regard to the portions of the water well construction program delegated under this section, the local governing agency shall exercise only the authority delegated to it under this section. If, after a public hearing, the department determines that a local governing body is not administering the program in accordance with this chapter, it shall notify the local governing body of the deficiencies. If corrective action is not taken within a reasonable time, not to exceed sixty days, the department by order shall withdraw the delegation of authority.

(5) The department shall promptly furnish the local governing body with a copy of each water well report and notification of start cards received in the area covered by a delegated program.

(6) The department and the local governing body shall coordinate to reduce duplication of effort and shall share all appropriate information including technical reports, violations, and well reports.

(7) Any person aggrieved by a decision of a local health district or county under a delegated program may appeal the decision to the department. The

department's decision is subject to review by the pollution control hearings board as provided in RCW 43.21B.110.

(8) The department shall not delegate the authority to license well contractors, renew licenses, receive notices of intent to commence constructing a well, receive well reports, or collect state fees provided for in this chapter.

~~((9) This section expires June 30, 2000.))~~

***NEW SECTION. Sec. 2. RCW 18.104.043 expires June 30, 2006.**

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

Passed the Senate February 7, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 17, 2000.

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

"I am returning herewith, without my approval as to section 2, Substitute Senate Bill No. 6349 entitled:

"AN ACT Relating to extending the expiration date of the water well delegation program;"

This bill would have extended the authority of the Department of Ecology to delegate the administration and enforcement of tagging, sealing, and decommissioning of water wells to local health districts or counties until June 30, 2006. By vetoing section 2, the Department's authority will be made permanent.

Currently, delegation of authority is only provided to local governments that meet the strict requirements of the Department, as set forth in a memorandum of understanding for each delegation. This program has been in place since 1992 and has already received two sunset reviews. It is time to make the program permanent because it is cost effective, and has a proven success record that is resulting in enhanced public health and environmental protections.

For these reasons, I have vetoed section 2 of Substitute Senate Bill No. 6349.

With the exception of section 2, Substitute Senate Bill No. 6349 is approved."

CHAPTER 33

[Senate Bill 6366]

ELECTRONIC COMMUNICATION—FALSE ADVERTISING

AN ACT Relating to false advertising through electronic communication; and amending RCW 9.04.050.

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

Sec. 1. RCW 9.04.050 and 1961 c 189 s 1 are each amended to read as follows:

It shall be unlawful for any person to publish, disseminate or display, or cause directly or indirectly, to be published, disseminated or displayed in any manner or by any means, including solicitation or dissemination by mail, telephone, electronic communication, or door-to-door contacts, any false, deceptive or misleading advertising, with knowledge of the facts which render the advertising false, deceptive or misleading, for any business, trade or commercial purpose or for the

purpose of inducing, or which is likely to induce, directly or indirectly, the public to purchase, consume, lease, dispose of, utilize or sell any property or service, or to enter into any obligation or transaction relating thereto: PROVIDED, That nothing in this section shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, such advertising in good faith without knowledge of its false, deceptive or misleading character.

Passed the Senate February 11, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 34

[Senate Bill 6378]

ENHANCED 911 ADVISORY COMMITTEE—EXPIRATION DATE

AN ACT Relating to extending the expiration date of the enhanced 911 advisory committee; amending RCW 38.52.530; and providing an expiration date.

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

Sec. 1. RCW 38.52.530 and 1997 c 49 s 7 are each amended to read as follows:

The enhanced 911 advisory committee is created to advise and assist the state enhanced 911 coordinator in coordinating and facilitating the implementation and operation of enhanced 911 throughout the state. The director shall appoint members of the committee who represent diverse geographical areas of the state and include state residents who are members of the national emergency number association, the associated public communications officers Washington chapter, the Washington state fire chiefs association, the Washington association of sheriffs and police chiefs, the Washington state council of fire fighters, the Washington state council of police officers, the Washington ambulance association, the state fire protection policy board, the Washington fire commissioners association, the Washington state patrol, the association of Washington cities, the Washington state association of counties, the utilities and transportation commission or commission staff, and representatives of large and small local exchange telephone companies. This section (~~shall~~) expires December 31, (~~2000~~) 2006.

Passed the Senate February 10, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 35

[Senate Bill 6642]

REAL ESTATE APPRAISERS—LICENSE DENIALS

AN ACT Relating to grounds for disciplinary action against a licensed or certified real estate appraiser; and amending RCW 18.140.160.

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

Sec. I. RCW 18.140.160 and 1996 c 182 s 9 are each amended to read as follows:

The director may deny an application for licensure or certification and may impose any one or more of the following sanctions against a state-licensed or state-certified appraiser: Suspend, revoke, or levy a fine not to exceed one thousand dollars for each offense and/or otherwise discipline in accordance with the provisions of this chapter, for any of the following acts or omissions:

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

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

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

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

(5) Conviction of any gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license or certificate holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

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

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

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

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

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

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

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

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

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

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

Passed the Senate February 15, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 36

[Substitute Senate Bill 6643]

POPULATION COUNTS—CORRECTIONAL FACILITIES

AN ACT Relating to disregarding persons confined in state correctional facilities for population counts under the growth management act; and amending RCW 36.70A.040.

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

Sec. 1. RCW 36.70A.040 and 1998 c 171 s 1 are each amended to read as follows:

(1) Each county that has both a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter. However, the county legislative authority of such a county with a population of less than fifty thousand population may adopt a resolution removing

the county, and the cities located within the county, from the requirements of adopting comprehensive land use plans and development regulations under this chapter if this resolution is adopted and filed with the department by December 31, 1990, for counties initially meeting this set of criteria, or within sixty days of the date the office of financial management certifies that a county meets this set of criteria under subsection (5) of this section. For the purposes of this subsection, a county not currently planning under this chapter is not required to include in its population count those persons confined in a correctional facility under the jurisdiction of the department of corrections that is located in the county.

Once a county meets either of these sets of criteria, the requirement to conform with all of the requirements of this chapter remains in effect, even if the county no longer meets one of these sets of criteria.

(2) The county legislative authority of any county that does not meet either of the sets of criteria established under subsection (1) of this section may adopt a resolution indicating its intention to have subsection (1) of this section apply to the county. Each city, located in a county that chooses to plan under this subsection, shall conform with all of the requirements of this chapter. Once such a resolution has been adopted, the county and the cities located within the county remain subject to all of the requirements of this chapter.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the

department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(4) Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(5) If the office of financial management certifies that the population of a county that previously had not been required to plan under subsection (1) or (2) of this section has changed sufficiently to meet either of the sets of criteria specified under subsection (1) of this section, and where applicable, the county legislative authority has not adopted a resolution removing the county from these requirements as provided in subsection (1) of this section, the county and each city within such county shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall adopt development regulations under RCW 36.70A.060 conserving agricultural lands, forest lands, and mineral resource lands it designated within one year of the certification by the office of financial management; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city located within the county shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan within four years of the certification by the office of financial management, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(6) A copy of each document that is required under this section shall be submitted to the department at the time of its adoption.

(7) Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000.

Passed the Senate February 14, 2000.
Passed the House February 29, 2000.
Approved by the Governor March 17, 2000.
Filed in Office of Secretary of State March 17, 2000.

CHAPTER 37

[Senate Bill 6667]

LICENSE PLATE REPLACEMENT—COMMERCIAL VEHICLES

AN ACT Relating to the replacement of license plates for certain commercial vehicles; and amending RCW 46.16.233.

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

Sec. 1. RCW 46.16.233 and 1997 c 291 s 2 are each amended to read as follows:

Except for those license plates issued under RCW 46.16.305(1) before January 1, 1987, under RCW 46.16.305(3), and to commercial vehicles with a gross weight in excess of twenty-six thousand pounds, effective with vehicle registrations due or to become due on January 1, 2001, all vehicle license plates must be issued on a standard background, as designated by the department. Additionally, to ensure maximum legibility and reflectivity, the department shall periodically provide for the replacement of license plates, except for commercial vehicles with a gross weight in excess of twenty-six thousand pounds. Frequency of replacement shall be established in accordance with empirical studies documenting the longevity of the reflective materials used to make license plates.

Passed the Senate February 15, 2000.
Passed the House February 29, 2000.
Approved by the Governor March 17, 2000.
Filed in Office of Secretary of State March 17, 2000.

CHAPTER 38

[Senate Bill 6741]

ORGANIZED CRIME ADVISORY BOARD—MEMBERSHIP

AN ACT Relating to the organized crime advisory board; and amending RCW 43.43.858.

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

Sec. 1. RCW 43.43.858 and 1987 c 65 s 1 are each amended to read as follows:

There is hereby created the organized crime advisory board of the state of Washington. The board shall consist of ~~((thirteen))~~ fourteen voting and two nonvoting members.

The lieutenant governor shall appoint four members of the senate to the board, no more than two of whom shall be from the same political party.

The governor shall appoint ~~((five))~~ six members to the board. Two members shall be county prosecuting attorneys and shall be appointed from a list of four county prosecutors agreed upon and submitted to the governor by the elected county prosecutors. One member shall be a municipal police chief, and one member shall be a county sheriff, both of whom shall be appointed from a list of three police chiefs and three sheriffs agreed upon and submitted to the governor by the association of sheriffs and police chiefs (RCW 36.28A.010). One member shall be a retired judge of a court of record. One member shall be the secretary of corrections or the secretary's designee.

The United States attorneys for the western and eastern districts of Washington shall be requested to serve on the board as nonvoting members and shall not be eligible to serve as chairperson.

The speaker of the house shall appoint four members of the house of representatives to the board, no more than two of whom shall be from the same political party.

The members of the board shall be qualified on the basis of knowledge and experience in matters relating to crime prevention and security or with such other abilities as may be expected to contribute to the effective performance of the board's duties. The members of the board shall meet with the chief of the Washington state patrol at least four times a year to perform the duties enumerated in RCW 43.43.862 and to discuss any other matters related to organized crime. Additional meetings of the board may be convened at the call of the chairperson or by a majority of the members. The board shall elect its own chairperson from among its members. Legislative members shall receive reimbursement for travel expenses incurred in the performance of their duties in accordance with RCW 44.04.120 ~~((as now existing or hereafter amended))~~, and the other members in accordance with RCW 43.03.050 and 43.03.060 ~~((as now existing or hereafter amended))~~.

Passed the Senate February 11, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 17, 2000.

Filed in Office of Secretary of State March 17, 2000.

CHAPTER 39

[Engrossed House Bill 2760]

EDUCATOR QUALITY

AN ACT Relating to standards for educator quality; adding new sections to chapter 28A.410 RCW; creating new sections; and repealing RCW 28A.410.020.

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

**PART 1
PROFESSIONAL EDUCATOR STANDARDS BOARD**

NEW SECTION. Sec. 101. INTENT. The legislature finds and declares:

- (1) Creation of a public body whose focus is educator quality would be likely to bring greater focus and attention to the profession;
- (2) Professional educator standards boards are consumer protection boards, establishing assessment policies to ensure the public that its new practitioners have the knowledge to be competent;
- (3) The highest possible standards for all educators are essential in ensuring attainment of high academic standards by all students;
- (4) Teacher assessment for certification can guard against admission to the teaching profession of persons who have not demonstrated that they are knowledgeable in the subjects they will be assigned to teach; and
- (5) Teacher assessment for certification should be implemented as an additional element to the system of teacher preparation and certification.

NEW SECTION. Sec. 102. A new section is added to chapter 28A.410 RCW to read as follows:

WASHINGTON PROFESSIONAL EDUCATOR STANDARDS BOARD.

- (1) The Washington professional educator standards board is created, consisting of nineteen members to be appointed by the governor to four-year terms and the superintendent of public instruction, who shall be an ex officio, nonvoting member. No person may serve as a member of the board for more than two consecutive full terms. The governor shall annually appoint the chair of the board from among the teachers and principals on the board. No board member may serve as chair for more than two consecutive years.
- (2) Seven of the members shall be public school teachers, one shall be a private school teacher, three shall represent higher education educator preparation programs, four shall be school administrators, two shall be educational staff associates, one shall be a parent, and one shall be a member of the public.
- (3) Public school teachers appointed to the board must:
 - (a) Have at least three years of teaching experience in a Washington public school;
 - (b) Be currently certificated and actively employed in a teaching position; and
 - (c) Include one teacher currently teaching at the elementary school level, one at the middle school level, one at the high school level, and one vocationally certificated.
- (4) Private school teachers appointed to the board must:
 - (a) Have at least three years of teaching experience in a Washington approved private school; and
 - (b) Be currently certificated and actively employed in a teaching position in an approved private school.
- (5) Appointees from higher education educator preparation programs must include two representatives from institutions of higher education as defined in

RCW 28B.10.016 and one representative from an institution of higher education as defined in RCW 28B.07.020(4).

(6) School administrators appointed to the board must:

(a) Have at least three years of administrative experience in a Washington public school district;

(b) Be currently certificated and actively employed in a school administrator position; and

(c) Include two public school principals, one Washington approved private school principal, and one superintendent.

(7) Educational staff associates appointed to the board must:

(a) Have at least three years of educational staff associate experience in a Washington public school district; and

(b) Be currently certificated and actively employed in an educational staff associate position.

(8) Each major caucus of the house of representatives and the senate shall submit a list of at least one public school teacher. In making the public school teacher appointments, the governor shall select one nominee from each list provided by each caucus. The governor shall appoint the remaining members of the board from a list of qualified nominees submitted to the governor by organizations representative of the constituencies of the board, from applications from other qualified individuals, or from both nominees and applicants.

(9) All appointments to the board made by the governor shall be subject to confirmation by the senate.

(10) The governor shall appoint the members of the initial board no later than June 1, 2000.

(11) In appointing board members, the governor shall consider the diversity of the population of the state.

(12) Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(13) The governor may remove a member of the board for neglect of duty, misconduct, malfeasance or misfeasance in office, or for incompetency or unprofessional conduct as defined in chapter 18.130 RCW. In such a case, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary of state shall send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

(14) If a vacancy occurs on the board, the governor shall appoint a replacement member from the nominees as specified in subsection (8) of this section to fill the remainder of the unexpired term. When filling a vacancy of a member nominated by a major caucus of the legislature, the governor shall select the new member from a list of at least one name submitted by the same caucus that provided the list from which the retiring member was appointed.

(15) Members of the board shall hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes only.

NEW SECTION. Sec. 103. A new section is added to chapter 28A.410 RCW to read as follows:

POWERS AND DUTIES OF THE BOARD. The Washington professional educator standards board shall:

(1) Serve as an advisory body to the superintendent of public instruction and as the sole advisory body to the state board of education on issues related to educator recruitment, hiring, preparation, certification including high quality alternative routes to certification, mentoring and support, professional growth, retention, governance, prospective teacher pedagogy assessment, prospective principal assessment, educator evaluation including but not limited to peer evaluation, and revocation and suspension of licensure;

(2) Submit annual reports and recommendations, beginning December 1, 2000, to the governor, the education and fiscal committees of the legislature, the state board of education, and the superintendent of public instruction concerning duties and activities within the board's advisory capacity. The Washington professional educator standards board shall submit a separate report by December 1, 2000, to the governor, the education and fiscal committees of the legislature, the state board of education, and the superintendent of public instruction providing recommendations for at least two high quality alternative routes to teacher certification. In its deliberations, the board shall consider at least one route that permits persons with substantial subject matter expertise to achieve residency certification through an on-the-job training program provided by a school district; and

(3) Establish the prospective teacher assessment system for basic skills and subject knowledge that shall be required to obtain residency certification pursuant to sections 201 through 203 of this act.

PART 2 TEACHER ASSESSMENT

NEW SECTION. Sec. 201. A new section is added to chapter 28A.410 RCW to read as follows:

(1)(a) Beginning not later than September 1, 2001, the Washington professional educator standards board shall make available and pilot a means of assessing an applicant's knowledge in the basic skills. For the purposes of this section, "basic skills" means the subjects of at least reading, writing, and mathematics. Beginning September 1, 2002, except as provided in (c) of this subsection and subsection (3) of this section, passing this assessment shall be required for admission to approved teacher preparation programs and for persons from out-of-state applying for a Washington state residency teaching certificate.

(b) On an individual student basis, approved teacher preparation programs may admit into their programs a candidate who has not achieved the minimum

basic skills assessment score established by the Washington professional educator standards board. Individuals so admitted may not receive residency certification without passing the basic skills assessment under this section.

(c) The Washington professional educator standards board may establish criteria to ensure that persons from out-of-state who are applying for residency certification and persons applying to master's degree level teacher preparation programs can demonstrate to the board's satisfaction that they have the requisite basic skills based upon having completed another basic skills assessment acceptable to the Washington professional educator standards board or by some other alternative approved by the Washington professional educator standards board.

(2) Beginning not later than September 1, 2002, the Washington professional educator standards board shall provide for the initial piloting and implementation of a means of assessing an applicant's knowledge in the subjects for which the applicant has applied for an endorsement to his or her residency or professional teaching certificate. The assessment of subject knowledge shall not include instructional methodology. Beginning September 1, 2003, passing this assessment shall be required to receive an endorsement for certification purposes.

(3) The Washington professional educator standards board may permit exceptions from the assessment requirements under subsections (1) and (2) of this section on a case-by-case basis.

(4) The Washington professional educator standards board shall provide for reasonable accommodations for individuals who are required to take the assessments in subsection (1) or (2) of this section if the individuals have learning or other disabilities.

(5) With the exception of applicants exempt from the requirements of subsections (1) and (2) of this section, an applicant must achieve a minimum assessment score or scores established by the Washington professional educator standards board on each of the assessments under subsections (1) and (2) of this section.

(6) The Washington professional educator standards board and superintendent of public instruction, as determined by the Washington professional educator standards board, may contract with one or more third parties for:

(a) The development, purchase, administration, scoring, and reporting of scores of the assessments established by the Washington professional educator standards board under subsections (1) and (2) of this section;

(b) Related clerical and administrative activities; or

(c) Any combination of the purposes in this subsection.

(7) Applicants for admission to a Washington teacher preparation program and applicants for residency and professional certificates who are required to successfully complete one or more of the assessments under subsections (1) and (2) of this section, and who are charged a fee for the assessment by a third party contracted with under subsection (6) of this section, shall pay the fee charged by

the contractor directly to the contractor. Such fees shall be reasonably related to the actual costs of the contractor in providing the assessment.

(8) The superintendent of public instruction is responsible for supervision and providing support services to administer this section.

(9) The Washington professional educator standards board shall collaboratively select or develop and implement the assessments and minimum assessment scores required under this section with the superintendent of public instruction and shall provide opportunities for representatives of other interested educational organizations to participate in the selection or development and implementation of such assessments in a manner deemed appropriate by the Washington professional educator standards board.

(10) The Washington professional educator standards board shall adopt rules under chapter 34.05 RCW that are reasonably necessary for the effective and efficient implementation of this section.

NEW SECTION. Sec. 202. A new section is added to chapter 28A.410 RCW to read as follows:

The Washington professional educator standards board shall report the proposed assessments to the legislative education committees for review and comment prior to implementing the assessments by contractual agreement with the selected vendor or vendors.

NEW SECTION. Sec. 203. A new section is added to chapter 28A.410 RCW to read as follows:

(1) By December 1, 2003, and annually thereafter, the Washington professional educator standards board shall prepare a report that includes the following information:

(a) The range of scores on the basic skills assessment under section 201(1) of this act for persons who passed the assessment and were admitted to a Washington preparation program; and

(b) The range of scores on the subject assessments under section 201(2) of this act for persons who passed the assessments and earned an endorsement.

(2) The information under subsection (1) of this section shall be reported for the individual public and private colleges and universities in Washington, as well as reported on an aggregate basis. The report shall also include results disaggregated demographically. The report shall include information on the number and percentage of candidates exempted from assessments, demographic information on candidates exempted, institutions attended and endorsements sought by exempted candidates, and reasons for exclusion from the required assessments. The report shall be made available through the state library, on the website of the office of superintendent of public instruction, and placed on the legislative alert list.

NEW SECTION. Sec. 204. By January 1, 2001, the Washington state institute for public policy shall report to the governor, the education and fiscal committees of the legislature, the state board of education, and the superintendent

of public instruction on its findings and recommendations concerning the governance of educator certification, licensure, and preparation issues and the scope of authority of the Washington professional educator standards board for the issues listed in section 103(1) of this act.

NEW SECTION. Sec. 205. RCW 28A.410.020 (Requirements for admission to teacher preparation programs—Rules) and 1996 c 309 s 1, 1991 c 116 s 20, 1988 c 251 s 4, & 1987 c 525 s 202, as now or hereafter amended, are each repealed, effective September 1, 2002.

PART 3 MISCELLANEOUS

NEW SECTION. Sec. 301. PART HEADINGS AND SECTION CAPTIONS NOT LAW. Part headings and section captions used in this act are not any part of the law.

Passed the House March 9, 2000.

Passed the Senate March 9, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 40

[Engrossed Second Substitute House Bill 1987] FIELD BURNING ALTERNATIVES—TAX EXEMPTIONS

AN ACT Relating to tax exemptions and credits for structures and equipment used to reduce agricultural burning of cereal grains and field and turf grass grown for seed; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new section to chapter 82.04 RCW; adding a new section to chapter 84.36 RCW; creating a new section; providing expiration dates; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to provide tax exemptions and credits to encourage alternatives to the field burning of cereal grains and field and turf grass grown for seed. The exemptions and credits are available to farmers and to other persons engaged in activities that make it possible to reduce field burning including persons involved in manufacturing or marketing straw or straw-based products, or to reduce the air emissions resulting from such burning. It is the intent of the legislature that the exemptions and credits provided by this act apply not only to facilities and machinery and equipment for alternatives currently available, but also to those that may become available in the future.

NEW SECTION. Sec. 2. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment, and to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, or to sales of tangible personal

property that becomes an ingredient or component of eligible structures or eligible machinery and equipment, if the machinery, equipment, or structure is used more than half of the time:

(a) For gathering, densifying, processing, handling, storing, transporting, or incorporating straw or straw-based products that results in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(b) To decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(3) The department of ecology and the department of agriculture shall consult with the department with regard to the information necessary for the department to administer this section.

(4) This section expires January 1, 2006.

NEW SECTION. Sec. 3. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, or tangible personal property that becomes an ingredient or component of eligible machinery and equipment used more than half of the time:

(a) For gathering, densifying, processing, handling, storing, transporting, or incorporating straw or straw-based products that will result in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(b) To decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section.

(3) The department of ecology shall provide the department with the information necessary for the department to administer this section.

(4) This section expires January 1, 2006.

NEW SECTION. Sec. 4. A new section is added to chapter 82.04 RCW to read as follows:

(1) A person who is eligible for the exemption under section 2 or 3 of this act may take a credit against tax imposed by this chapter, subject to the limitations in this section.

(2) The credit under this section is equal to fifty percent of the amount of costs expended for constructing structures or acquiring machinery and equipment for which an exemption was taken under section 2 or 3 of this act.

(3) No application is necessary for the credit under this section. A person taking the credit must keep records necessary for the department to verify

eligibility under this section. Tax credit may not be claimed for expenditures that occurred before the effective date of this section.

(4) No applicant is eligible for tax credits under this section in excess of the amount of tax that would otherwise be due under this chapter. Approved credit may not be carried over to subsequent calendar years. The credit must be claimed by the due date of the last tax return for the calendar year in which the payment is made. Any unused credit expires. Refunds shall not be given in place of credits.

(5) This section expires January 1, 2006.

NEW SECTION. Sec. 5. A new section is added to chapter 84.36 RCW to read as follows:

Personal property eligible for exemption under section 2 or 3 of this act is exempt from taxation.

This section applies to taxes levied for collection in 2001 through 2006. This section expires January 1, 2007.

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 takes effect immediately.

Passed the House February 14, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 41

[House Bill 2329]

REAL PROPERTY JUDGMENT DESCRIPTIONS

AN ACT Relating to judgment descriptions; and amending RCW 4.64.030.

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

Sec. 1. RCW 4.64.030 and 1999 c 296 s 1 are each amended to read as follows:

(1) 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.

(2)(a) 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.

(b) If the judgment provides for the award of any right, title, or interest in real property, the first page must also include an abbreviated legal description of the property in which the right, title, or interest was awarded by the judgment, including lot, block, plat, or section, township, and range, and reference to the

judgment page number where the full legal description is included, if applicable; ~~((and))~~ or the assessor's property tax parcel or account number, consistent with RCW 65.04.045(1) (f) and (g).

(c) If the judgment provides for damages arising from the ownership, maintenance, or use of a motor vehicle as specified in RCW 46.29.270, the first page of the judgment summary must clearly state that the judgment is awarded pursuant to RCW 46.29.270 and that the clerk must give notice to the department of licensing as outlined in RCW 46.29.310.

(3) If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. The clerk may not enter 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 January 31, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 42

[Substitute House Bill 2338]

PARKS AND RECREATION COMMISSION—REAL PROPERTY DISPOSAL

AN ACT Relating to disposal of real property; and adding a new section to chapter 79A.05 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 79A.05 RCW to read as follows:

(1) Notwithstanding any other provision of this chapter, the commission may directly dispose of up to ten contiguous acres of real property, without public auction, to resolve trespass, property ownership disputes, and boundary adjustments with adjacent private property owners. Real property to be disposed of under this section may be disposed of only after appraisal and for at least fair market value, and only if the transaction is in the best interest of the state. The commission shall cooperate with potential purchasers to arrive at a mutually agreeable sales price. If necessary, determination of fair market value may include the use of separate independent appraisals by each party and the review of the appraisals, as agreed upon by the parties. All conveyance documents shall be executed by the governor. All proceeds from the disposal of the property shall be paid into the park land acquisition account. No disposal of real property may be made without the unanimous consent of the commission.

(2) Prior to the disposal of any real property under subsection (1) of this section, the commission shall hold a public hearing on the proposal in the county where the real property, or the greatest portion of the real property, is located. At least ten days, but not more than twenty-five days, prior to the hearing, the

commission shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the real property is located. A news release concerning the public hearing must be disseminated among print and electronic media in the area where the real property is located. The public notice and news release shall also identify the real property involved in the proposed disposal and describe the purpose of the proposed disposal. A summary of the testimony presented at the public hearing shall be prepared for the commission's consideration when reviewing the proposed disposal of real property.

(3) If there is a failure to substantially comply with the procedures set out under this section, then the agreement to dispose of the real property is subject to being declared invalid by a court of competent jurisdiction. Such a suit must be brought within one year of the date of the real property disposal agreement.

Passed the House March 5, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 43

[Engrossed House Bill 2340]

DRUG OFFENDER SENTENCING ALTERNATIVE—OFFENDER REMOVAL

AN ACT Relating to the termination of offenders from the special drug offender sentencing alternative; and reenacting and amending RCW 9.94A.120.

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

Sec. 1. RCW 9.94A.120 and 1999 c 324 s 2, 1999 c 197 s 4, 1999 c 196 s 5, and 1999 c 147 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 (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 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))~~ (6), (8), or (9), 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: (a) In the case of an offender in need of emergency medical treatment; (b) 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; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.150(4).

(5)(a) 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 a term of community supervision or community custody as specified in (b) of this subsection, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Undergo available outpatient treatment for up to the period specified in (b) of this subsection, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (iii) Pursue a prescribed, secular course of study or vocational training;
- (iv) Remain within prescribed geographical boundaries and notify the community corrections officer prior to any change in the offender's address or employment;
- (v) Report as directed to a community corrections officer; or
- (vi) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(b) The terms and statuses applicable to sentences under (a) of this subsection are:

- (i) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is

ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and

(ii) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this subsection (5) is subject to conditions and sanctions as authorized in this subsection (5) and subsection (11)(b) and (c) of this section.

(c) The department shall discharge from community supervision any offender sentenced under this subsection (5) before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;

(iii) For a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, 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; and

(iv) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.

(b) If 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.

The court shall also impose:

(i) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in

a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(ii) Crime-related prohibitions including a condition not to use illegal controlled substances; ~~(and)~~

(iii) A requirement to submit to urinalysis or other testing to monitor that status; and

(iv) A term of community custody pursuant to subsection (1) of this section to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives 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:

(A) Devote time to a specific employment or training;

(B) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(C) Report as directed to a community corrections officer;

(D) Pay all court-ordered legal financial obligations;

(E) Perform community service work;

(F) Stay out of areas designated by the sentencing judge;

(G) Such other conditions as the court may require such as affirmative conditions.

(c) If the offender violates any of the sentence conditions in (b) of this subsection or is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department unless waived by the offender.

(i) If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

(ii) If the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(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.

(e) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to community custody and earned early release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned early release time.

(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; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in subsection (1)(b) and (c) of this section; 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.

(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 sex 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 eleven 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 custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section;

(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; and

(C) Sex offenders sentenced under this special sex offender sentencing alternative are not eligible to accrue any earned release time while serving a suspended sentence.

(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 custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.

(v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection.

(vi) The court may revoke the suspended sentence at any time during the period of community custody 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 custody shall be credited to the offender if the suspended sentence is revoked.

(vii) Except as provided in (a)(viii) 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.

(viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (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 (8) and the rules adopted by the department of health.

(ix) For purposes of this subsection (8), "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.

(x) If the defendant was less than eighteen years of age when the charge was filed, the state shall pay for the cost of initial evaluation and treatment.

(b) 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 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 (8)(b) does not apply to any crime committed after July 1, 1990.

(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.

(d) Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department.

(9)(a)(i) 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, but before July 25, 1999, 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 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.

(ii) Except for persons sentenced under (b) of this subsection or subsection (10)(a) of this section, when a court sentences a person to a term of total confinement to the custody of the department of corrections for a violent offense, any crime against a person under RCW 9.94A.440(2), 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 25, 1999, but before July 1, 2000, 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 release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences the offender under this subsection (9)(a)(ii) 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 committed on or after July 1, 1990, but before June 6, 1996, or a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, but before July 1, 2000, 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 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 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 possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) The offender shall pay supervision fees as determined by the department of corrections;

(v) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement; and

(vi) The offender shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the department.

(c) As a part of any sentence imposed under (a) or (b) of this subsection, 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;

(v) The offender shall comply with any crime-related prohibitions; or

(vi) For an offender convicted of a felony sex offense against a minor victim after June 6, 1996, the offender shall comply with any terms and conditions of community placement imposed by the department of corrections relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(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.

(10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, but before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody 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 release in accordance with RCW 9.94A.150 (1) and (2).

(b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section.

(c) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(11)(a) When a court sentences a person to the custody of the department of corrections for a sex offense, a violent offense, any crime against a person under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW (~~not sentenced under subsection (6) of this section~~), committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin (~~either~~): (i) Upon completion of the term of confinement (~~or~~); (ii) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2); or (iii) with regard to offenders sentenced under subsection (6) of this section, upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

(b) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in subsection (9)(b)(i) through (vi) of this section. The conditions may also include those provided for in subsection (9)(c)(i) through (vi) of this section. The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to (f) of this subsection. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. The department may not impose conditions that are contrary to those ordered by the court and may not

contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(c) If an offender violates conditions imposed by the court or the department pursuant to this subsection during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.205 and 9.94A.207.

(d) Except for terms of community custody under subsection (8) of this section, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(e) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(f) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (11)(f).

(g) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (i) The crime of conviction; (ii) the offender's risk of reoffending; or (iii) the safety of the community.

(12) 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.

(13) 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 for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. 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 unless the superior court extends the criminal judgment an additional ten years. If the legal financial obligations including crime victims' assessments are not paid during the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. 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.

(14) 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, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(15) All offenders sentenced to terms involving community supervision, community service, community placement, community custody, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

(a) The instructions shall include, at a minimum, 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.

(b) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. For offenders sentenced

to terms of community custody for crimes committed on or after July 1, 2000, the department may additionally require the offender to participate in rehabilitative programs or otherwise perform affirmative conduct, and to obey all laws.

The conditions authorized under this subsection (15)(b) may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10) of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) or (11) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) or (11)(e) of this section.

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.

(16) All offenders sentenced to terms involving community supervision, community service, community custody, 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.

(17) 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.

(18) 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).

(19) 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.

(20) 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.

(21) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

(22) 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.

(23) 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.

(24) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(25)(a) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this section shall be conducted only by sex offender treatment providers certified by the department of health under chapter 18.155 RCW unless the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified providers are available for treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; (iii) the evaluation and treatment plan comply with the rules adopted by the department of health; or (iv) the treatment provider is employed by the department. A treatment provider selected by an offender who is not certified by the department of health shall consult with a certified provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and

content of the consultation shall be based on the recommendation of the certified provider.

(b) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

Passed the House January 27, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 44

[Substitute House Bill 2345]

SPECIAL COMMITMENT CENTER—RULE-MAKING AUTHORITY

AN ACT Relating to rule-making authority for the special commitment center; adding a new section to chapter 71.09 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 71.09 RCW to read as follows:

The secretary shall adopt rules under the administrative procedure act, chapter 34.05 RCW, for the oversight and operation of the program established pursuant to this chapter. Such rules shall include provisions for an annual inspection of the special commitment center and requirements for treatment plans and the retention of records.

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

Passed the House February 8, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 45

[Substitute House Bill 2348]

CONSERVATION DISTRICTS—TREASURER SERVICES

AN ACT Relating to conservation districts; amending RCW 89.08.210; and adding a new section to chapter 89.08 RCW.

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

Sec. 1. RCW 89.08.210 and 1973 1st ex.s. c 184 s 22 are each amended to read as follows:

The supervisors may employ a secretary, treasurer, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and determine their qualifications, duties, and compensation. It may call upon the attorney general for legal services, or may employ its own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as it deems proper. The supervisors shall furnish to the commission, upon request, copies of such internal rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as the commission may require in the performance of its duties under this 1973 amendatory act. The supervisors shall provide for the execution of surety bonds for officers and all employees who shall be entrusted with funds or property.

The supervisors shall provide for the keeping of a full and accurate record of all proceedings, resolutions, regulations, and orders issued or adopted. The supervisors shall provide for an annual audit of the accounts of receipts and disbursements in accordance with procedures prescribed by regulations of the commission.

The board may invite the legislative body of any municipality or county near or within the district, to designate a representative to advise and consult with it on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. The governing body of a district shall appoint such advisory committees as may be needed to assure the availability of appropriate channels of communication to the board of supervisors, to persons affected by district operations, and to local, regional, state and interstate special-purpose districts and agencies responsible for community planning, zoning, or other resource development activities. The district shall keep such committees informed of its work, and such advisory committees shall submit recommendations from time to time to the board of supervisors.

NEW SECTION. Sec. 2. A new section is added to chapter 89.08 RCW to read as follows:

The treasurer of the county in which a conservation district is located is ex officio treasurer of the district. However, the board of supervisors by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the conservation district. The board of supervisors shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the board of supervisors by resolution from time to time finds will protect the district against loss. The premium on this bond shall be paid by the district.

All district funds shall be paid to the treasurer and disbursed only on warrants issued by an auditor appointed by the board of supervisors, upon orders or vouchers approved by it. The treasurer shall establish a conservation district fund into which shall be paid all district funds. The treasurer shall maintain any special

funds created by the board of supervisors for the placement of all money as the board of supervisors may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositories under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the district is some other person, all funds shall be deposited in a bank or banks authorized to do business in this state as the board of supervisors, by resolution, designates.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district, if the district pays the premium.

Passed the House February 3, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 46

[House Bill 2353]

GAMBLING COMMISSION—CRIMINAL HISTORY RECORDS

AN ACT Relating to the dissemination of criminal history records to the Washington state gambling commission; and amending RCW 9.46.210.

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

Sec. 1. RCW 9.46.210 and 1981 c 139 s 11 are each amended to read as follows:

(1) It shall be 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.

(2) In addition to the authority granted by subsection (1) of this section law enforcement agencies of cities and counties shall investigate and report to the commission all violations of the provisions of this chapter and of the rules of the commission found by them and shall assist the commission in any of its investigations and proceedings respecting any such violations. Such law enforcement agencies shall not be deemed agents of the commission.

(3) In addition to its other powers and duties, the commission shall have the power to enforce the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, both assistant directors, and each of the commission's investigators, enforcement officers, and inspectors shall have the power, under the supervision of the commission, to enforce the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the

conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power to arrest without a warrant, any person or persons found in the act of violating any of the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth above, the commission shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions of this chapter, as now law or hereafter amended, and to obtain information from and provide information to all other law enforcement agencies.

(4) Criminal history record information that includes nonconviction data, as defined in RCW 10.97.030, may be disseminated by a criminal justice agency to the Washington state gambling commission for any purpose associated with the investigation for suitability for involvement in gambling activities authorized under this chapter. The Washington state gambling commission shall only disseminate nonconviction data obtained under this section to criminal justice agencies.

Passed the House February 8, 2000.

Passed the Senate March 8, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 47

[Engrossed Substitute House Bill 2380]

BOARDING HOMES—ADMINISTRATION—ADVISORY BOARD

AN ACT Relating to boarding homes; amending RCW 18.20.020, 18.20.040, 18.20.050, 18.20.110, 18.20.120, 18.20.130, and 18.20.190; amending 1998 c 272 s 24 (uncodified); adding a new section to chapter 18.20 RCW; repealing RCW 18.20.060 and 18.20.100; and providing an effective date.

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

Sec. 1. RCW 18.20.020 and 1998 c 272 s 14 are each amended to read as follows:

As used in this chapter:

(1) "Aged person" means a person of the age sixty-five years or more, or a person of less than sixty-five years who by reason of infirmity requires domiciliary care.

(2) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing board and domiciliary care to ~~((three))~~ seven or more aged persons not related by blood or marriage to the operator. ~~((It))~~ However, a boarding home that is licensed to provide board and domiciliary care to three to six persons on the effective date of this act may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" shall not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the department of housing and urban development.

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(4) "Secretary" means the secretary of social and health services.

(5) "Department" means the state department of social and health services.

~~(((6) "Authorized department" means any city, county, city-county health department or health district authorized by the secretary to carry out the provisions of this chapter.))~~

Sec. 2. RCW 18.20.040 and 1957 c 253 s 4 are each amended to read as follows:

An application for a license shall be made to the department ~~((or authorized department))~~ upon forms provided by ~~((either of said departments))~~ the department and shall contain such information as the department reasonably requires, which shall include affirmative evidence of ability to comply with such rules ~~((and regulations))~~ as are lawfully ~~((promulgated))~~ adopted by the ~~((board))~~ department.

Sec. 3. RCW 18.20.050 and 1987 c 75 s 3 are each amended to read as follows:

Upon receipt of an application for license, if the applicant and the boarding home facilities meet the requirements established under this chapter, the department ~~((or the department and the authorized health department jointly,))~~ shall issue a license. If there is a failure to comply with the provisions of this chapter or the standards~~((;))~~ and rules~~((, and regulations promulgated))~~ adopted pursuant thereto, the department~~((, or the department and authorized health department,))~~ may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the boarding home for a period to be determined by the department, ~~((or the department and authorized health department,))~~ but not to exceed twelve months, which provisional license

shall not be subject to renewal. At the time of the application for or renewal of a license or provisional license the licensee shall pay a license fee as established by the department under RCW 43.20B.110. ~~((When the license or provisional license is issued jointly by the department and authorized health department, the license fee shall be paid to the authorized health department.))~~ All licenses issued under the provisions of this chapter shall expire on a date to be set by the department, but no license issued pursuant to this chapter shall exceed twelve months in duration ~~((: PROVIDED, That))~~. However, when the annual license renewal date of a previously licensed boarding home is set by the department on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. All applications for renewal of a license shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

Sec. 4. RCW 18.20.110 and 1985 c 213 s 7 are each amended to read as follows:

The department ~~((or authorized health department))~~ shall make or cause to be made at least a yearly inspection and investigation of all boarding homes. Every inspection shall focus primarily on actual or potential resident outcomes, and may include an inspection of every part of the premises and an examination of all records (other than financial records), methods of administration, the general and special dietary, and the stores and methods of supply. Following such an inspection or inspections, written notice of any violation of this law or the rules ~~((and regulations promulgated))~~ adopted hereunder ~~((:))~~ shall be given to the applicant or licensee and the department. The department may prescribe by ~~((regulations))~~ rule that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition, or new construction, submit plans and specifications therefor to the ~~((department or to the authorized department))~~ agencies responsible for plan reviews for preliminary inspection and approval or recommendations with respect to compliance with the ~~((regulations))~~ rules and standards herein authorized.

Sec. 5. RCW 18.20.120 and 1994 c 214 s 25 are each amended to read as follows:

All information received by the department ~~((or authorized health department))~~ through filed reports, inspections, or as otherwise authorized under this chapter ~~((:))~~ shall not be disclosed publicly in any manner as to identify individuals or boarding homes, except at the specific request of a member of the public and disclosure is consistent with RCW 42.17.260(1).

Sec. 6. RCW 18.20.130 and 1995 c 369 s 4 are each amended to read as follows:

Standards for fire protection and the enforcement thereof, with respect to all boarding homes to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt such recognized standards as may be applicable to boarding homes for the protection of life against the cause and spread of fire and fire hazards. The department, upon receipt of an application for a license, shall submit to the chief of the Washington state patrol, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the boarding home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire ~~((regulations))~~ rules as ~~((promulgated))~~ adopted by the chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the boarding home and the department ~~((or authorized department))~~ as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire ~~((regulations))~~ rules. The department, ~~((authorized department;))~~ applicant, or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any requirements made by him or her, and the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the boarding home to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department ~~((or authorized department;))~~ a written report approving same with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such homes at least annually.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the code for boarding homes adopted by the chief of the Washington state patrol, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, and they shall jointly approve the premises before a full license can be issued.

Sec. 7. RCW 18.20.190 and 1998 c 272 s 15 are each amended to read as follows:

(1) The department of social and health services is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that a boarding home provider has:

- (a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;
- (b) Operated a boarding home without a license or under a revoked license;
- (c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or
- (d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

- (a) Refuse to issue a license;
- (b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;
- (c) Impose civil penalties of not more than one hundred dollars per day per violation;
- (d) Suspend, revoke, or refuse to renew a license; or
- (e) Suspend admissions to the boarding home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any new resident until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain adequate care and service.

(4) RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification. Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

NEW SECTION. Sec. 8. A new section is added to chapter 18.20 RCW to read as follows:

(1) In an effort to ensure a cooperative process among the department, boarding home provider representatives, and resident and family representatives on matters pertaining to the boarding home program, the secretary, or his or her designee, shall designate an advisory board. The advisory board must include representatives of the state-wide boarding home associations, the state long-term care ombudsman program, the state-wide resident council program, consumers, and family representatives. Depending on the topic to be discussed, the department may invite other representatives in addition to the named members of the advisory board. The secretary, or his or her designee, shall periodically, but not less than

quarterly, convene a meeting of the advisory board to encourage open dialogue on matters affecting the boarding home program. It is, minimally, expected that the department will discuss with the advisory board the department's inspection, enforcement, and quality improvement activities, in addition to seeking their comments and recommendations on matters described under subsection (2) of this section.

(2) The secretary, or his or her designee, shall seek comments and recommendations from the advisory board prior to the adoption of rules and standards, implementation of boarding home provider programs, or development of methods and rates of payment.

(3) For the purpose of implementing this section, "department" means either the department of health or the department of social and health services, depending on which department has the licensing authority under this chapter.

Sec. 9. 1998 c 272 s 24 (uncodified) is amended to read as follows:

(1) Section((s)) 13 (~~(through 16)~~) of this act expires July 1, 2000(~~(unless reauthorized by the legislature)~~).

(2) Section 17 of this act expires December 12, 1999.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

(1) RCW 18.20.060 (Actions against license) and 1991 c 3 s 35, 1989 c 175 s 60, 1985 c 213 s 5, & 1957 c 253 s 6; and

(2) RCW 18.20.100 (Enforcement by local authorities—Authorization) and 1979 c 141 s 26 & 1957 c 253 s 10.

NEW SECTION. Sec. 11. This act takes effect July 1, 2000.

Passed the House March 8, 2000.

Passed the Senate March 7, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 48

[House Bill 2459]

WINTER RECREATION ADVISORY COMMITTEE

AN ACT Relating to the continuing operation of the winter recreation advisory committee; and amending RCW 79A.05.255.

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

Sec. 1. RCW 79A.05.255 and 1994 c 264 s 19 are each amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One representative of the department of natural resources, one representative of the department of fish and wildlife, and one representative of the Washington state association of counties, each of whom shall be appointed by the director of the particular department or association.

(3) The terms of the members appointed under subsection (2)(a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW ~~((43.51.310))~~ 79A.05.235 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee ~~((chairman))~~ chair or by majority vote of the committee. The ~~((chairman))~~ chair of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

~~((7) The winter recreation advisory committee and its powers and duties shall terminate on June 30, 2001.))~~

Passed the House February 8, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 49

[House Bill 2522]

DISTRICT COURT JURISDICTION

AN ACT Relating to district court jurisdiction; and amending RCW 3.66.020.

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

Sec. 1. RCW 3.66.020 and 1997 c 246 s 1 are each amended to read as follows:

If the value of the claim or the amount at issue does not exceed (~~(thirty-five)~~) fifty thousand dollars, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction and cognizance of the following civil actions and proceedings:

- (1) Actions arising on contract for the recovery of money;
- (2) Actions for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same and actions to recover the possession of personal property;
- (3) Actions for a penalty;
- (4) Actions upon a bond conditioned for the payment of money, when the amount claimed does not exceed (~~(thirty-five)~~) fifty thousand dollars, though the penalty of the bond exceeds that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;
- (5) Actions on an undertaking or surety bond taken by the court;
- (6) Actions for damages for fraud in the sale, purchase, or exchange of personal property;
- (7) Proceedings to take and enter judgment on confession of a defendant;
- (8) Proceedings to issue writs of attachment, garnishment and replevin upon goods, chattels, moneys, and effects; and
- (9) All other actions and proceedings of which jurisdiction is specially conferred by statute, when the title to, or right of possession of real property is not involved.

Passed the House February 9, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 50

[Engrossed Second Substitute House Bill 2588]

DOMESTIC VIOLENCE FATALITY REVIEWS

AN ACT Relating to domestic violence fatality reviews; adding a new chapter to Title 43 RCW; and creating new sections.

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) "Department" means the department of social and health services.
- (2) "Domestic violence fatality" means a homicide or suicide under any of the following circumstances:
 - (a) The alleged perpetrator and victim resided together at any time;
 - (b) The alleged perpetrator and victim have a child in common;

(c) The alleged perpetrator and victim were married, divorced, separated, or had a dating relationship;

(d) The alleged perpetrator had been stalking the victim;

(e) The homicide victim lived in the same household, was present at the workplace of, was in proximity of, or was related by blood or affinity to a victim who experienced or was threatened with domestic abuse by the alleged perpetrator; or

(f) The victim or perpetrator was a child of a person in a relationship that is described within this subsection.

This subsection should be interpreted broadly to give the domestic violence fatality review panels discretion to review fatalities that have occurred directly to domestic relationships.

NEW SECTION. Sec. 2. (1) Subject to the availability of state funds, the department shall contract with an entity with expertise in domestic violence policy and education and with a state-wide perspective to coordinate review of domestic violence fatalities. The coordinating entity shall be authorized to:

(a) Convene regional review panels;

(b) Gather information for use of regional review panels;

(c) Provide training and technical assistance to regional review panels;

(d) Compile information and issue biennial reports with recommendations;

and

(e) Establish a protocol that may be used as a guideline for identifying domestic violence related fatalities, forming review panels, convening reviews, and selecting which cases to review. The coordinating entity may also establish protocols for data collection and preservation of confidentiality.

(2)(a) The coordinating entity may convene a regional domestic violence fatality review panel to review any domestic violence fatality.

(b) Private citizens may request a review of a particular death by submitting a written request to the coordinating entity within two years of the death. Of these, the appropriate regional review panel may review those cases which fit the criteria set forth in the protocol for the project.

NEW SECTION. Sec. 3. (1) Regional domestic violence fatality review panels shall include but not be limited to:

(a) Medical personnel with expertise in domestic violence abuse;

(b) Coroners or medical examiners or others experienced in the field of forensic pathology, if available;

(c) County prosecuting attorneys and municipal attorneys;

(d) Domestic violence shelter service staff and domestic violence victims' advocates;

(e) Law enforcement personnel;

(f) Local health department staff;

(g) Child protective services workers;

(h) Community corrections professionals;

- (i) Perpetrator treatment program provider; and
- (j) Judges, court administrators, and/or their representatives.

(2) Regional domestic violence fatality review panels may also invite other relevant persons to serve on an ad hoc basis and participate as full members of the review team for a particular review. These persons may include, but are not limited to:

- (a) Individuals with particular expertise helpful to the regional review panel;
- (b) Representatives of organizations or agencies that had contact with or provided services to the homicide victim or to the alleged perpetrator.

(3) The regional review panels shall make periodic reports to the coordinating entity and shall make a final report to the coordinating entity with regard to every fatality that is reviewed.

NEW SECTION. Sec. 4. (1) An oral or written communication or a document shared within or produced by a regional domestic violence fatality review panel related to a domestic violence fatality review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a regional domestic violence fatality review panel, or between a third party and a regional domestic violence fatality review panel is confidential and not subject to disclosure or discovery by a third party. Notwithstanding the foregoing, recommendations from the regional domestic violence fatality review panel and the coordinating entity generally may be disclosed minus personal identifiers.

(2) The regional review panels, only to the extent otherwise permitted by law or court rule, shall have access to information and records regarding the domestic violence victims and perpetrators under review held by domestic violence perpetrators' treatment providers; dental care providers; hospitals, medical providers, and pathologists; coroners and medical examiners; mental health providers; lawyers; the state and local governments; the courts; and employers. The coordinating entity and the regional review panels shall maintain the confidentiality of such information to the extent required by any applicable law.

(3) The regional review panels shall review, only to the extent otherwise permitted by law or court rule when determined to be relevant and necessary to an investigation, guardian ad litem reports, parenting evaluations, and victim impact statements; probation information; mental health evaluations done for court; presentence interviews and reports, and any recommendations made regarding bail and release on own recognizance; child protection services, welfare, and other information held by the department; any law enforcement incident documentation, such as incident reports, dispatch records, victim, witness, and suspect statements, and any supplemental reports, probable cause statements, and 911 call taker's reports; corrections and postsentence supervision reports; and any other information determined to be relevant to the review. The coordinating entity and the regional review panels shall maintain the confidentiality of such information to the extent required by any applicable law.

NEW SECTION. Sec. 5. If acting in good faith, without malice, and within the parameters of this chapter and the protocols established, representatives of the coordinating entity and the regional domestic violence fatality review panels are immune from civil liability for an activity related to reviews of particular fatalities.

NEW SECTION. Sec. 6. Within available funds, data regarding each domestic violence fatality review shall be collected on standard forms created by the coordinating entity. Data collected on reviewed fatalities shall be compiled and analyzed for the purposes of identifying points at which the system response to domestic violence could be improved and identifying patterns in domestic violence fatalities.

NEW SECTION. Sec. 7. (1) A biennial state-wide report shall be issued by the coordinating entity in December of even-numbered years containing recommendations on policy changes that would improve program performance, and issues identified through the work of the regional panels. Copies of this report shall be distributed to the governor, the house of representatives children and family services and criminal justice and corrections committees, and the senate human services and corrections and judiciary committees and to those agencies involved in the regional domestic violence fatality review panels.

(2) The annual report in December 2010 shall contain a recommendation as to whether or not the domestic violence review process provided for in this chapter should continue or be terminated by the legislature.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 9. 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. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

****NEW SECTION. Sec. 10. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2000, in the omnibus appropriations act, this act is null and void.***

****Sec. 10 was vetoed. See message at end of chapter.***

Passed the House March 7, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 22, 2000, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 22, 2000.

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

"I am returning herewith, without my approval as to section 10, Engrossed Second Substitute House Bill No. 2588 entitled:

"AN ACT Relating to domestic violence fatality reviews;"

This bill establishes a statewide domestic violence fatality review program, to coordinate multi-disciplinary local reviews of deaths involving domestic violence. The bill specifically provides that the program can operate only if funds are available to the Department of Social and Health Services for this purpose. Section 10 would have made the bill "null and void" unless specific funding for its purpose, referencing the bill, is provided in the supplemental budget.

As I act on this bill, the Legislature has not yet adopted a supplemental budget. I expect that budget, when adopted, will include funding to implement the fatality review program the bill establishes. However, some versions of the budget legislation do not reference this bill specifically, even though they include the necessary funding. To avoid the possibility of nullifying this important legislation through inadvertent failure to refer to it in the supplemental budget, I have vetoed section 10.

For these reasons, I have vetoed section 10 of Engrossed Second Substitute House Bill No. 2588.

With the exception of section 10, Engrossed Second Substitute House Bill No. 2588 is approved."

CHAPTER 51

[House Bill 2595]

FRAIL ELDERS OR VULNERABLE ADULTS—PROTECTION ORDERS

AN ACT Relating to protection orders; and amending RCW 26.50.160 and 74.34.130.

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

Sec. 1. RCW 26.50.160 and 1995 c 246 s 18 are each amended 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 data base 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, and every order for protection issued under chapter 74.34 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.

Sec. 2. RCW 74.34.130 and 1999 c 176 s 13 are each amended to read as follows:

The court may order relief as it deems necessary for the protection of the petitioner, including, but not limited to the following:

- (1) Restraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation;
- (2) Excluding the respondent from petitioner's residence for a specified period or until further order of the court;
- (3) Prohibiting contact by respondent for a specified period or until further order of the court;
- (4) Requiring an accounting by respondent of the disposition of petitioner's income or other resources;
- (5) Restraining the transfer of property for a specified period not exceeding ninety days;
- (6) Requiring the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Any relief granted by an order for protection, other than a judgment for costs, shall be for a fixed period not to exceed one year. The clerk of the court shall enter any order for protection issued under this section into the judicial information system.

Passed the House February 10, 2000.

Passed the Senate March 7, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 52

[House Bill 2612]

DUI DEFENDANTS—COURT APPEARANCE

AN ACT Relating to clarifying when a defendant must appear; and amending RCW 46.61.50571.

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

Sec. 1. RCW 46.61.50571 and 1999 c 114 s 1 are each amended to read as follows:

(1) A defendant who is ~~((arrested for))~~ charged with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, shall be required to appear in person before a ~~((magistrate))~~ judicial officer within one judicial day after the arrest if the defendant is served with a citation or complaint at the time of the arrest. A court may by local court rule waive the requirement for appearance within one judicial day if it provides for the appearance at the earliest practicable day following arrest and establishes the method for identifying that day in the rule.

(2) A defendant who is charged ~~((by citation, complaint, or information))~~ with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in

RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, and who is not ~~((arrested))~~ served with a citation or complaint at the time of the incident, shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of an appearance required by this section, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

(4) Appearances required by this section are mandatory and may not be waived.

Passed the House February 10, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 53

[Engrossed Substitute House Bill 2617]

VESSEL EXCURSION SERVICES

AN ACT Relating to vessels providing excursion services; amending 1995 c 361 s 4 (uncodified); and creating a new section.

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

Sec. 1. 1995 c 361 s 4 (uncodified) is amended to read as follows:

Effective ~~((January 1, 2001))~~ July 1, 2002, the following acts or parts of acts are each repealed:

(1) ~~((Section 1 of this act))~~ RCW 81.84.005 and 1995 c 361 s 1;

(2) ~~((Section 1 of this act))~~ RCW 81.84.007 and 1995 c 361 s 3; and

(3) ~~((Section 3 of this act))~~ RCW 81.84.015 and 1995 c 361 s 2.

NEW SECTION. Sec. 2. As part of the work of the legislative transportation committee task force on the utilities and transportation commission, the task force shall review vessel service conveying persons, excursion classification, and general issues regarding the distinction of the two classifications. To the greatest degree possible, the task force shall encourage input from interested or affected parties, and consider the impact of various regulatory classifications on tourism and trade.

Passed the House February 10, 2000.

Passed the Senate February 28, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 54

[House Bill 2750]

SEXUAL ASSAULT PREVENTION SERVICES

AN ACT Relating to defining core services for victims of sexual assault; and amending RCW 70.125.030.

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

Sec. I. RCW 70.125.030 and 1999 c 45 s 6 are each amended to read as follows:

As used in this chapter and unless the context indicates otherwise:

(1) "Core services" means treatment services for victims of sexual assault including information and referral, crisis intervention, medical advocacy, legal advocacy, support, ~~((and))~~ system coordination, and prevention for potential victims of sexual assault.

(2) "Department" means the department of community, trade, and economic development.

(3) "Law enforcement agencies" means police and sheriff's departments of this state.

(4) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.

(5) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

(6) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

(7) "Sexual assault" means one or more of the following:

- (a) Rape or rape of a child;
- (b) Assault with intent to commit rape or rape of a child;
- (c) Incest or indecent liberties;
- (d) Child molestation;
- (e) Sexual misconduct with a minor;
- (f) Custodial sexual misconduct;
- (g) Crimes with a sexual motivation; or
- (h) An attempt to commit any of the aforementioned offenses.

(8) "Specialized services" means treatment services for victims of sexual assault including support groups, therapy, and specialized sexual assault medical examination ~~((, and prevention education to potential victims of sexual assault))~~.

(9) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault.

Passed the House February 15, 2000.
 Passed the Senate March 1, 2000.
 Approved by the Governor March 22, 2000.
 Filed in Office of Secretary of State March 22, 2000.

CHAPTER 55

[House Bill 2774]

JUDGES PRO TEMPORE—APPOINTMENT

AN ACT Relating to appointment of judges pro tempore; and amending RCW 3.50.090 and 35.20.200.

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

Sec. 1. RCW 3.50.090 and 1984 c 258 s 112 are each amended to read as follows:

The ~~((mayor shall, in writing, appoint))~~ presiding municipal court judge may designate one or more persons as judges pro tem ((who shall act)) to serve in the absence or disability of the ~~((regular))~~ elected or duly appointed judges of ((a municipal)) the court ((or)), subsequent to the filing of an affidavit of prejudice ~~((The judges pro tem shall be qualified to hold the position of judge of the municipal court as provided herein. The municipal court judges pro tem)), or in addition to the elected or duly appointed judges when the administration of justice and the accomplishment of the work of the court make it necessary. The qualifications of a judge pro tempore shall be the same as for judges as provided under RCW 3.50.040 except that a judge pro tempore need not be a resident of the city or county in which the municipal court is located. Judges pro tempore shall have all of the powers of the duly appointed or elected judges when serving as judges pro tempore of the court. Before entering on his or her duties, each judge pro tempore shall take, subscribe, and file an oath as is taken by a duly appointed or elected judge. Such pro tempore judges shall receive such compensation as shall be fixed by ((the ordinances of the legislative body of the city or town wherein the municipal court is located. The term of the appointment shall be specified in writing but in any event shall not extend beyond the term of the appointing mayor)) ordinance by the municipality in which the court is located and such compensation shall be paid by the municipality.~~

Sec. 2. RCW 35.20.200 and 1996 c 16 s 2 are each amended to read as follows:

The ~~((mayor))~~ presiding municipal court judge shall, from attorneys residing in the city and qualified to hold the position of judge of the municipal court as provided in RCW 35.20.170, appoint judges pro tempore who shall act in the absence of the regular judges of the court or in addition to the regular judges when the administration of justice and the accomplishment of the work of the court make it necessary. The ~~((mayor))~~ presiding municipal court judge may appoint, as judges pro tempore, any full-time district court judges serving in the county in which the city is situated. ~~((The judges of the municipal court shall promulgate~~

~~rules establishing general standards for the use of judges pro tempore. A copy of said rules shall be filed with the legislative authority of the city at the time of budget consideration. Such appointments of attorneys shall be made from a list of attorneys in accordance herewith furnished by the judges of the municipal court.))~~
The term of office must be specified in writing. While acting as judge of the court, judges pro tempore shall have all of the powers of the regular judges. Before entering upon his or her duties, each judge pro tempore shall take, subscribe and file an oath as is taken by a municipal judge. Judges pro tempore shall not practice before the municipal court during their term of office as judge pro tempore. Such municipal judges pro tempore shall receive such compensation as shall be fixed by ordinance by the legislative body of the city and such compensation shall be paid by the city except that district court judges shall not be compensated by the city other than pursuant to an interlocal agreement.

Passed the House February 10, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 56

[Substitute House Bill 2792]

PERSONAL FINANCIAL INFORMATION—CONFIDENTIALITY

AN ACT Relating to confidentiality of personal financial information; and reenacting and amending RCW 42.17.310.

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

Sec. I. RCW 42.17.310 and 1999 c 326 s 3, 1999 c 290 s 1, and 1999 c 215 s 1 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 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, computer source code or object code, 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, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 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, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(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)) 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and

copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(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.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police

chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers supplied to an agency for the purpose of electronic transfer of funds, except when disclosure is expressly required by law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license.

(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.

Passed the House February 9, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 57

[House Bill 2853]

REHABILITATION COUNCIL FOR THE BLIND

AN ACT Relating to the rehabilitation council for the blind; and amending RCW 74.18.070, 74.18.080, 74.18.090, and 74.18.100.

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

Sec. 1. RCW 74.18.070 and 1983 c 194 s 7 are each amended to read as follows:

(1) There is hereby created the ~~((advisory))~~ rehabilitation council for the blind. ~~((The advisory council shall consist of at least six and no more than ten members.))~~
The rehabilitation council shall consist of the minimum number of voting members

to meet the requirements of the rehabilitation council required under the federal rehabilitation act of 1973 as now or hereafter amended. A majority of the voting members shall be blind. ~~((Advisory))~~ Rehabilitation council members shall be residents of the state of Washington, ~~((and no member shall be an employee of the department))~~ and shall represent the categories of membership specified in the federal rehabilitation act of 1973 as now or hereafter amended. The director of the department of services for the blind shall be an ex officio, nonvoting member.

(2) The governor shall appoint members of the ~~((advisory))~~ rehabilitation council for terms of three years, except that the initial appointments shall be as follows: (a) Three members for terms of three years; (b) two members for terms of two years; and (c) other members for terms of one year. Vacancies in the membership of the ~~((advisory))~~ rehabilitation council shall be filled by the governor for the remainder of the unexpired term.

(3) The governor may remove members of the ~~((advisory))~~ rehabilitation council for cause.

Sec. 2. RCW 74.18.080 and 1983 c 194 s 8 are each amended to read as follows:

(1) The ~~((advisory))~~ rehabilitation council for the blind shall meet officially with the director of the department quarterly to perform the duties enumerated in RCW 74.18.090. Additional meetings of the ~~((advisory))~~ rehabilitation council may be convened at the call of the chairperson or of a majority of the members. The ~~((advisory))~~ rehabilitation council shall elect a chairperson from among its members for a term of one year or until a successor has been elected.

(2) ~~((Advisory))~~ Rehabilitation council members shall receive reimbursement for travel expenses incurred in the performance of their official duties in accordance with RCW 43.03.050 and 43.03.060.

Sec. 3. RCW 74.18.090 and 1983 c 194 s 9 are each amended to read as follows:

The ~~((advisory))~~ rehabilitation council for the blind may:

(1) Provide counsel to the director in developing, reviewing, ~~((and))~~ making recommendations, and agreeing on the department's state plan for vocational rehabilitation, budget requests, permanent rules concerning services to blind citizens, and other major policies which impact the quality or quantity of services for the blind;

(2) Undertake annual reviews with the director of the needs of blind citizens, the effectiveness of the services and priorities of the department to meet those needs, and the measures that could be taken to improve the department's services;

(3) Annually make recommendations to the governor and the legislature on issues related to the department of services for the blind, other state agencies, or state laws which have a significant effect on the opportunities, services, or rights of blind citizens; ~~((and))~~

(4) Advise and make recommendations to the governor on the criteria and qualifications pertinent to the selection of the director;

(5) Perform additional functions as required by the federal rehabilitation act of 1973 as now or hereafter amended.

Sec. 4. RCW 74.18.100 and 1983 c 194 s 10 are each amended to read as follows:

It shall be the duty of the director to consult in a timely manner with the ((advisory)) rehabilitation council for the blind on the matters enumerated in RCW 74.18.090. The director shall provide appropriate departmental resources for the use of the ((advisory)) rehabilitation council in conducting its official business.

Passed the House February 11, 2000.
Passed the Senate March 3, 2000.
Approved by the Governor March 22, 2000.
Filed in Office of Secretary of State March 22, 2000.

CHAPTER 58

[House Bill 2868]

WAREHOUSE RECEIPTS—ELECTRONIC FORMS

AN ACT Relating to electronic forms of warehouse receipts; and amending RCW 62A.7-202.

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

Sec. 1. RCW 62A.7-202 and 1965 ex.s. c 157 s 7-202 are each amended to read as follows:

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written ((or)), printed, or electronic terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (RCW 62A.7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who

issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Title and do not impair his obligation of delivery (RCW 62A.7-403) or his duty of care (RCW 62A.7-204). Any contrary provisions shall be ineffective.

Passed the House February 8, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 59

[House Bill 3005]

CORONARY HEALTH CARE—CERTIFICATE OF NEED METHODOLOGY

AN ACT Relating to revising the methodology applied to certificates of need for rural coronary health centers; creating new sections; providing an expiration date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that cardiovascular disease is the leading cause of death in Washington state, accounting for approximately forty-two percent of all deaths. The legislature also finds that many of these deaths can be prevented or delayed by reducing risk factors and improving access to services. Some rural areas, such as Walla Walla county, have a disproportionately high average annual rate for heart disease while lacking access to available life-saving medical resources. The legislature further finds that access to quality coronary tertiary health care services must be assured, especially for rural communities.

NEW SECTION. Sec. 2. (1) The department of health shall revise the methodology applied to certificate of need applications for the tertiary health services of open heart surgery, therapeutic cardiac catheterization, and percutaneous transluminal coronary angioplasty.

(2) The revision shall be a detailed and complete new methodology, which the department shall promptly adopt into rule, replacing the existing methodology.

(3) The process used to develop the new methodology shall involve a cross-section of Washington's cardiac surgery programs, cardiac surgeons not directly affiliated with existing hospital programs, and representatives of medical education. The department shall assure administrative and technical requirements of the certificate of need program are met.

(4) The department shall provide a report to the health committees of the legislature on the development of a new methodology by July 1, 2000, and provide to the health committees of the legislature a copy of the new rules upon adoption.

(5) This section expires December 31, 2000.

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 takes effect immediately.

Passed the House February 9, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 60

[Senate Bill 6285]

PEARL HARBOR REMEMBRANCE DAY

AN ACT Relating to establishing Pearl Harbor remembrance day; and amending RCW 1.16.050.

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

Sec. 1. RCW 1.16.050 and 1999 c 26 s 1 are each amended to read as follows:

The following are legal holidays: Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

Employees of the state and its political subdivisions, except employees of school districts and except those nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, shall be entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for herein after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall be recognized as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

Whenever any legal holiday, other than Sunday, falls upon a Sunday, the following Monday shall be the legal holiday.

Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal holiday.

Nothing in this section shall be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordinance or resolution of the local government legislative authority.

The legislature declares that the twelfth day of October shall be recognized as Columbus Day but shall not be considered a legal holiday for any purposes.

The legislature declares that the ninth day of April shall be recognized as former prisoner of war recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twenty-sixth day of January shall be recognized as Washington army and air national guard day but shall not be considered a legal holiday for any purposes.

The legislature declares that the seventh day of August shall be recognized as purple heart recipient recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the second Sunday in October be recognized as Washington state children's day but shall not be considered a legal holiday for any purposes.

The legislature declares that the sixteenth day of April shall be recognized as Mother Joseph day and the fourth day of September as Marcus Whitman day, but neither shall be considered legal holidays for any purpose.

The legislature declares that the seventh day of December be recognized as Pearl Harbor remembrance day but shall not be considered a legal holiday for any purpose.

Passed the Senate February 11, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 61

[Senate Bill 6570]

TRUANCY PETITIONS

AN ACT Relating to judicial authority in truancy petitions; and amending RCW 28A.225.090.

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

Sec. 1. RCW 28A.225.090 and 1999 c 319 s 4 are each amended to read as follows:

(1) A court may order a child subject to a petition under RCW 28A.225.035 to do one or more of the following:

(a) Attend the child's current school, and set forth minimum attendance requirements, including suspensions;

(b) If there is space available and the program can provide educational services appropriate for the child, order the child to attend another public school, an alternative education program, center, a skill center, dropout prevention program, or another public educational program;

(c) Attend a private nonsectarian school or program including an education center. Before ordering a child to attend an approved or certified private nonsectarian school or program, the court shall: (i) Consider the public and private programs available; (ii) find that placement is in the best interest of the child; and (iii) find that the private school or program is willing to accept the child and will not charge any fees in addition to those established by contract with the student's school district. If the court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide educational services for the child. The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district. A school district shall not be required to enter into a contract that is longer than the remainder of the school year. A school district shall not be required to enter into or continue a contract if the child is no longer enrolled in the district;

(d) Be referred to a community truancy board, if available; or

(e) Submit to testing for the use of controlled substances or alcohol based on a determination that such testing is appropriate to the circumstances and behavior of the child and will facilitate the child's compliance with the mandatory attendance law and, if any test ordered under this subsection indicates the use of controlled substances or alcohol, order the minor to abstain from the unlawful consumption of controlled substances or alcohol and adhere to the recommendations of the drug assessment at no expense to the school.

(2) If the child fails to comply with the court order, the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to detention such as community service. Failure by a child to comply with an order issued under this subsection shall not be subject to detention for a period greater than that permitted pursuant to a civil contempt proceeding against a child under chapter 13.32A RCW.

(3) Any parent violating any of the provisions of either RCW 28A.225.010, 28A.225.015, or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. 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 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 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 child in a supervised plan for the 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.

(4) If a child continues to be truant after entering into a court-approved order with the truancy board under RCW 28A.225.035, the juvenile court shall find the child in contempt, and the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to detention such as meaningful community service. Failure by a child to comply with an order issued under this subsection may not subject a child to detention for a period greater than that permitted under a civil contempt proceeding against a child under chapter 13.32A RCW.

(5) Subsections (1), (2), and (4) of this section shall not apply to a six or seven year-old child required to attend public school under RCW 28A.225.015.

Passed the Senate March 7, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 62

[Engrossed Substitute Senate Bill 6761]

CORRECTIONS—TRANSFERRING OFFENDERS OUT-OF-STATE

AN ACT Relating to agreements for the operation of correctional facilities and programs in any other state; amending RCW 72.68.010 and 72.68.040; adding new sections to chapter 72.68 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 72.68 RCW to read as follows:

The legislature has in the past allowed funding for transfer of convicted felons to a private institution in another state. It is the legislature's intent to clarify the law to reflect that the secretary of corrections has authority to contract with private corporations to house felons out-of-state and has had that authority since before February 1, 1999, when specific authority to expend funds during specified bienniums was granted under RCW 72.09.050. The secretary has the authority to expend funds between February 1, 1999, and June 30, 2001, for contracts with private corporations to house felons out-of-state.

Sec. 2. RCW 72.68.010 and 1983 c 255 s 10 are each amended to read as follows:

(1) Whenever in its judgment the best interests of the state or the welfare of any prisoner confined in any penal institution will be better served by his or her transfer to another institution or to a foreign country of which the prisoner is a citizen or national, the secretary may effect such transfer consistent with applicable

federal laws and treaties. The secretary has the authority to transfer offenders out-of-state to private or governmental institutions if the secretary determines that transfer is in the best interest of the state or the offender. The determination of what is in the best interest of the state or offender may include but is not limited to considerations of overcrowding, emergency conditions, or hardship to the offender. In determining whether the transfer will impose a hardship on the offender, the secretary shall consider: (a) The location of the offender's family and whether the offender has maintained contact with members of his or her family; (b) whether, if the offender has maintained contact, the contact will be significantly disrupted by the transfer due to the family's inability to maintain the contact as a result of the transfer; and (c) whether the offender is enrolled in a vocational or educational program that cannot reasonably be resumed if the offender is returned to the state.

(2) If directed by the governor, the secretary shall, in carrying out this section and RCW 43.06.350, adopt rules under chapter 34.05 RCW to effect the transfer of prisoners requesting transfer to foreign countries.

Sec. 3. RCW 72.68.040 and 1981 c 136 s 117 are each amended to read as follows:

The secretary may contract with the authorities of the federal government, or the authorities of any state of the United States, private companies in other states, or ((ef)) any county or city in this state providing for the detention in an institution or jail operated by such ((governmental-unit)) entity, ((ef)) for prisoners convicted of a felony in the courts of this state and sentenced to a term of imprisonment therefor in a state correctional institution for convicted felons under the jurisdiction of the department. After the making of a contract under this section, prisoners sentenced to a term of imprisonment in a state correctional institution for convicted felons may be conveyed by the superintendent or his assistants to the institution or jail named in the contract. The prisoners shall be delivered to the authorities of the institution or jail, there to be confined until their sentences have expired or they are otherwise discharged by law, paroled or until they are returned to a state correctional institution for convicted felons for further confinement.

NEW SECTION. Sec. 4. A new section is added to chapter 72.68 RCW to read as follows:

(1) If the secretary transfers any offender to an institution in another state after the effective date of this act, the secretary shall, prior to the transfer, review the records of victims registered with the department. If any registered victim of the offender resides: (a) In the state to which the offender is to be transferred; or (b) in close proximity to the institution to which the offender is to be transferred, the secretary shall notify the victim prior to the transfer and consider the victim's concerns about the transfer.

(2) Any victim notified under subsection (1) of this section shall also be notified of the return of the offender to a facility in Washington, prior to the return.

(3) The secretary shall develop a written policy to define "close proximity" for purposes of this section.

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 takes effect immediately.

Passed the Senate February 15, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 63

[Substitute Senate Bill 5590]

SCHOOL ADMINISTRATION OF ORAL MEDICATION

AN ACT Relating to which health professionals may sign a request to have oral medication administered by school employees; and amending RCW 28A.210.260 and 28A.210.270.

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

Sec. 1. RCW 28A.210.260 and 1994 sp.s. c 9 s 720 are each amended to read as follows:

Public school districts and private schools which conduct any of grades kindergarten through the twelfth grade may provide for the administration of oral medication of any nature to students who are in the custody of the school district or school at the time of administration, but are not required to do so by this section, subject to the following conditions:

(1) The board of directors of the public school district or the governing board of the private school or, if none, the chief administrator of the private school shall adopt policies which address the designation of employees who may administer oral medications to students, the acquisition of parent requests and instructions, and the acquisition of ~~((dentist and physician))~~ requests from licensed health professionals prescribing within the scope of their prescriptive authority and instructions regarding students who require medication for more than fifteen consecutive school days, the identification of the medication to be administered, the means of safekeeping medications with special attention given to the safeguarding of legend drugs as defined in chapter 69.41 RCW, and the means of maintaining a record of the administration of such medication;

(2) The board of directors shall seek advice from one or more licensed physicians or nurses in the course of developing the foregoing policies;

(3) The public school district or private school is in receipt of a written, current and unexpired request from a parent, or a legal guardian, or other person having legal control over the student to administer the medication to the student;

(4) The public school district or the private school is in receipt of (a) a written, current and unexpired request from a licensed ~~((physician or dentist))~~ health professional prescribing within the scope of his or her prescriptive authority for administration of the medication, as there exists a valid health reason which makes administration of such medication advisable during the hours when school is in

session or the hours in which the student is under the supervision of school officials, and (b) written, current and unexpired instructions from such ~~((physician or dentist))~~ licensed health professional prescribing within the scope of his or her prescriptive authority regarding the administration of prescribed medication to students who require medication for more than fifteen consecutive work days;

(5) The medication is administered by an employee designated by or pursuant to the policies adopted pursuant to subsection (1) of this section and in substantial compliance with the prescription of a ~~((physician or dentist))~~ licensed health professional prescribing within the scope of his or her prescriptive authority or the written instructions provided pursuant to subsection (4) of this section;

(6) The medication is first examined by the employee administering the same to determine in his or her judgment that it appears to be in the original container and to be properly labeled; and

(7) The board of directors shall designate a professional person licensed pursuant to chapter 18.71 RCW or chapter 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, to train and supervise the designated school district personnel in proper medication procedures.

Sec. 2. RCW 28A.210.270 and 1990 c 33 s 208 are each amended to read as follows:

(1) In the event a school employee administers oral medication to a student pursuant to RCW 28A.210.260 in substantial compliance with the prescription of the student's ~~((physician or dentist))~~ licensed health professional prescribing within the scope of the professional's prescriptive authority or the written instructions provided pursuant to RCW 28A.210.260(4), and the other conditions set forth in RCW 28A.210.260 have been substantially complied with, then the employee, the employee's school district or school of employment, and the members of the governing board and chief administrator thereof shall not be liable in any criminal action or for civil damages in their individual or marital or governmental or corporate or other capacities as a result of the administration of the medication.

(2) The administration of oral medication to any student pursuant to RCW 28A.210.260 may be discontinued by a public school district or private school and the school district or school, its employees, its chief administrator, and members of its governing board shall not be liable in any criminal action or for civil damages in their governmental or corporate or individual or marital or other capacities as a result of the discontinuance of such administration: PROVIDED, That the chief administrator of the public school district or private school, or his or her designee, has first provided actual notice orally or in writing in advance of the date of discontinuance to a parent or legal guardian of the student or other person having legal control over the student.

Passed the Senate February 11, 2000.
Passed the House March 2, 2000.
Approved by the Governor March 22, 2000.
Filed in Office of Secretary of State March 22, 2000.

CHAPTER 64

[Substitute Senate Bill 5805]

REGISTERED NURSES—PRESCRIPTIVE AUTHORITY

AN ACT Relating to completion of prescriptive authority for advanced registered nurse practitioners; amending RCW 18.79.050, 18.79.240, and 18.79.250; adding new sections to chapter 18.79 RCW; adding a new section to chapter 18.71 RCW; adding a new section to chapter 18.57 RCW; and providing an effective date.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 18.79 RCW to read as follows:

The dispensing of Schedules II through IV controlled substances subject to RCW 18.79.240(1)(s) is limited to a maximum of a seventy-two-hour supply of the prescribed controlled substance.

Sec. 2. RCW 18.79.050 and 1994 sp.s. c 9 s 405 are each amended to read as follows:

"Advanced registered nursing practice" means the performance of the acts of a registered nurse and the performance of an expanded role in providing health care services as recognized by the medical and nursing professions, the scope of which is defined by rule by the commission. Upon approval by the commission, an advanced registered nurse practitioner may prescribe legend drugs and controlled substances contained in Schedule V of the Uniform Controlled Substances Act, chapter 69.50 RCW, and Schedules II through IV subject to RCW 18.79.240(1) (r) or (s).

Nothing in this section prohibits a person from practicing a profession for which a license has been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

This section does not prohibit (1) the nursing care of the sick, without compensation, by an unlicensed person who does not hold himself or herself out to be an advanced registered nurse practitioner, or (2) the practice of registered nursing by a licensed registered nurse or the practice of licensed practical nursing by a licensed practical nurse.

Sec. 3. RCW 18.79.240 and 1994 sp.s. c 9 s 424 are each amended to read as follows:

(1) In the context of the definition of registered nursing practice and advanced registered nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice registered nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing aides;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a registered nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by adherents of the church so long as they do not engage in the practice of nursing as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or a bureau, division, or agency thereof, while in the discharge of his or her official duties;

(h) Permitting the measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses for the aid thereof;

(i) Permitting the prescribing or directing the use of, or using, an optical device in connection with ocular exercises, visual training, vision training, or orthoptics;

(j) Permitting the prescribing of contact lenses for, or the fitting and adaptation of contact lenses to, the human eye;

(k) Prohibiting the performance of routine visual screening;

(l) Permitting the practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW, respectively;

(m) Permitting the practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulation of the spine;

(n) Permitting the practice of podiatric medicine and surgery as defined in chapter 18.22 RCW;

(o) Permitting the performance of major surgery, except such minor surgery as the commission may have specifically authorized by rule adopted in accordance with chapter 34.05 RCW;

(p) Permitting the prescribing of controlled substances as defined in Schedules I through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, except as provided in (r) or (s) of this subsection;

(q) Prohibiting the determination and pronouncement of death;

(r) Prohibiting advanced registered nurse practitioners, approved by the commission as certified registered nurse anesthetists from selecting, ordering, or administering controlled substances as defined in Schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, consistent with their commission-recognized scope of practice; subject to facility-specific protocols, and subject to a request for certified registered nurse anesthetist anesthesia services issued by a physician licensed under chapter 18.71 RCW, an osteopathic physician and surgeon licensed under chapter 18.57 RCW, a dentist licensed under chapter 18.32 RCW, or a podiatric physician and surgeon licensed under chapter 18.22 RCW; the authority to select, order, or administer Schedule II through IV controlled substances being limited to those drugs that are to be directly administered to patients who require anesthesia for diagnostic, operative, obstetrical, or therapeutic procedures in a hospital, clinic, ambulatory surgical facility, or the office of a practitioner licensed under chapter 18.71, 18.22, 18.36, 18.36A, 18.57, 18.57A, or 18.32 RCW; "select" meaning the decision-making process of choosing a drug, dosage, route, and time of administration; and "order" meaning the process of directing licensed individuals pursuant to their statutory authority to directly administer a drug or to dispense, deliver, or distribute a drug for the purpose of direct administration to a patient, under instructions of the certified registered nurse anesthetist. "Protocol" means a statement regarding practice and documentation concerning such items as categories of patients, categories of medications, or categories of procedures rather than detailed case-specific formulas for the practice of nurse anesthesia;

(s) Prohibiting advanced registered nurse practitioners from ordering or prescribing controlled substances as defined in Schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, if and to the extent: (i) Doing so is permitted by their scope of practice; (ii) it is in response to a combined request from one or more physicians licensed under chapter 18.71 or 18.57 RCW and an advanced registered nurse practitioner licensed under this chapter, proposing a joint practice arrangement under which such prescriptive authority will be exercised with appropriate collaboration between the practitioners; and (iii) it is consistent with rules adopted under this subsection. The medical quality assurance commission, the board of osteopathic medicine and surgery, and the commission are directed to jointly adopt by consensus by rule a process and criteria that implements the joint practice arrangements authorized under this subsection. This subsection (1)(s) does not apply to certified registered nurse anesthetists.

(2) In the context of the definition of licensed practical nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice practical nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of practical nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing assistants;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting or preventing the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a licensed practical nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by adherents of the church so long as they do not engage in licensed practical nurse practice as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof, while in the discharge of his or her official duties.

Sec. 4. RCW 18.79.250 and 1994 sp.s. c 9 s 425 are each amended to read as follows:

An advanced registered nurse practitioner 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 18.79.260 and 18.79.270:

(1) Perform specialized and advanced levels of nursing as recognized jointly by the medical and nursing professions, as defined by the commission;

(2) Prescribe legend drugs and Schedule V controlled substances, as defined in the Uniform Controlled Substances Act, chapter 69.50 RCW, and Schedules II through IV subject to RCW 18.79.240(1) (r) or (s) within the scope of practice defined by the commission;

(3) Perform all acts provided in RCW 18.79.260;

(4) Hold herself or himself out to the public or designate herself or himself as an advanced registered nurse practitioner or as a nurse practitioner.

NEW SECTION. Sec. 5. A new section is added to chapter 18.71 RCW to read as follows:

The commission is directed to jointly adopt by consensus, with the board of osteopathic medicine and surgery and the Washington state nursing care quality assurance commission, a process and criteria that implements the joint practice arrangements authorized under RCW 18.79.240(1)(s).

NEW SECTION. Sec. 6. A new section is added to chapter 18.57 RCW to read as follows:

The board is directed to jointly adopt by consensus, with the medical quality assurance commission and the Washington state nursing care quality assurance commission, a process and criteria that implements the joint practice arrangements authorized under RCW 18.79.240(1)(s).

NEW SECTION. Sec. 7. A new section is added to chapter 18.79 RCW to read as follows:

The commission is directed to jointly adopt by consensus, with the medical quality assurance commission and the board of osteopathic medicine and surgery, a process and criteria that implements the joint practice arrangements authorized under RCW 18.79.240(1)(s).

NEW SECTION. Sec. 8. Sections 1 through 3 of this act take effect July 1, 2000.

NEW SECTION. Sec. 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate February 2, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 65

[Substitute Senate Bill 5932]

COMMUNITY COLLEGES—BUILDING FEES

AN ACT Relating to general obligation bond debt service payments from the community and technical college projects account; amending RCW 28B.50.360; repealing 1997 c 235 s 709 (uncodified); and declaring an emergency.

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

Sec. 1. RCW 28B.50.360 and 1997 c 42 s 1 are each amended to read as follows:

Within thirty-five days from the date of start of each quarter all collected building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board if issuing bonds payable out of building fees shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college capital projects account. Such amounts of the funds deposited in the community and technical college capital projects account as are necessary to pay and secure the payment of the principal of and interest on the building bonds issued by the college board as authorized by this chapter shall be exclusively devoted to that purpose. If in any twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall notify the college board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) The community and technical college capital projects account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended exclusively to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, and for the payment of principal of and interest on any bonds issued for such purposes.

~~((3) Notwithstanding the provisions of subsections (1) and (2) of this section, at such time as all outstanding building bonds of the college board payable from the community and technical college capital projects account have been paid, redeemed, and retired, or at such time as ample provision has been made by the state for full payment, from some source other than the community and technical college capital projects account, of the principal of and the interest on and call premium, if applicable, of such bonds as they mature and/or upon their call prior to their maturity, through refunding or otherwise, that portion of all building fees of the community and technical colleges equal to the amount required to pay yearly debt service on any general obligation bonds issued by the state in accordance with Article VIII, section 1, Washington state Constitution, for community and technical college purposes, shall be paid into the general fund of the state treasury. The state finance committee shall determine whether ample provision has been made for payment of such bonds payable from the community and technical college capital projects account and shall determine the amount required to pay yearly debt service on such general obligation bonds of the state. Nothing in this subsection shall be construed as obligating the legislature or the state to provide for payment of such college building bonds from some source other than the community and technical~~

~~college capital projects account or as pledging the general credit of the state to the payment of such bonds.))~~

NEW SECTION. Sec. 2. 1997 c 235 s 709 (uncodified) is 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 takes effect immediately.

Passed the Senate January 26, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 66

[Substitute Senate Bill 6071]

HIT AND RUN DRIVERS—PENALTIES

AN ACT Relating to duties of drivers involved in accidents; amending RCW 46.52.020 and 13.40.0357; reenacting and amending RCW 9.94A.320; and prescribing penalties.

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

Sec. 1. RCW 46.52.020 and 1990 c 210 s 2 are each amended to read as follows:

(1) A driver of any vehicle involved in an accident resulting in the injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to, and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(2) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person or damage to other property shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to, and in any event shall remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(3) Unless otherwise provided in subsection (7) of this section the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person or damage to other property shall give his or her name, address, insurance company, insurance policy number, and vehicle license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such

carrying is requested by the injured person or on his or her behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for such accident.

(4)(a) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section ~~((under said circumstances shall be))~~ in the case of an accident resulting in death is guilty of a class B felony and, upon conviction, is punishable according to chapter 9A.20 RCW.

(b) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident resulting in injury is guilty of a class C felony and, upon conviction, ((be punished pursuant to RCW 9A.20.020: PROVIDED; That)) is punishable according to chapter 9A.20 RCW.

(c) This ((provision)) subsection shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying ((herewith)) with this section.

(5) Any driver covered by the provisions of subsection (2) of this section failing to stop or to comply with any of the requirements of subsection (3) of this section under said circumstances shall be guilty of a gross misdemeanor: PROVIDED, That this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.

(6) The license or pennit to drive or any nonresident privilege to drive of any person convicted under this section or any local ordinance consisting of substantially the same language as this section of failure to stop and give information or render aid following an accident with any vehicle driven or attended by any person shall be revoked by the department.

(7) If none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (3) of this section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (1) and (3) of this section insofar as possible on his or her part to be performed, shall forthwith report such accident to the nearest office of the duly authorized police authority and submit thereto the information specified in subsection (3) of this section.

Sec. 2. RCW 9.94A.320 and 1999 c 352 s 3, 1999 c 322 s 5, and 1999 c 45 s 4 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))

- Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
- XIII Malicious explosion 2 (RCW 70.74.280(2))
Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
Assault of a Child 1 (RCW 9A.36.120)
Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
Rape 1 (RCW 9A.44.040)
Rape of a Child 1 (RCW 9A.44.073)
- XI Manslaughter 1 (RCW 9A.32.060)
Rape 2 (RCW 9A.44.050)
Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Kidnapping 1 (RCW 9A.40.020)
Leading Organized Crime (RCW 9A.82.060(1)(a))
Malicious explosion 3 (RCW 70.74.280(3))
Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))
Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
- IX Assault of a Child 2 (RCW 9A.36.130)
Controlled Substance Homicide (RCW 69.50.415)
Explosive devices prohibited (RCW 70.74.180)
Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW ((88.12.029)) 79A.60.050)
Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
Malicious placement of an explosive 2 (RCW 70.74.270(2))

- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
- Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW ~~((88-12-029))~~ 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
- Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine (RCW 69.50.440)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW ~~((88-12-029))~~ 79A.60.050)

- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV (RCW 69.50.401(a)(1)(i))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)

- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- On and after July 1, 2000: No-Contact Order Violation: Domestic Violence Pretrial Condition (RCW 10.99.040(4) (b) and (c))
- On and after July 1, 2000: No-Contact Order Violation: Domestic Violence Sentence Condition (RCW 10.99.050(2))
- On and after July 1, 2000: Protection Order Violation: Domestic Violence Civil Action (RCW 26.50.110 (4) and (5))
- On and after July 1, 2000: Stalking (RCW 9A.46.110)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW ((88-12-032)) 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Escape 1 (RCW 9A.76.110)

- Hit and Run—Injury ((Accident)) (RCW 46.52.020(4)(b))
 - Hit and Run with Vessel—Injury Accident (RCW ((88.12.155)) 79A.60.200(3))
 - Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
 - Influencing Outcome of Sporting Event (RCW 9A.82.070)
 - Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
 - Malicious Harassment (RCW 9A.36.080)
 - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(a)(1) (iii) through (v))
 - Residential Burglary (RCW 9A.52.025)
 - Robbery 2 (RCW 9A.56.210)
 - Theft of Livestock 1 (RCW 9A.56.080)
 - Threats to Bomb (RCW 9.61.160)
 - Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
 - Vehicular Assault (RCW 46.61.522)
 - Willful Failure to Return from Furlough (RCW 72.66.060)
- III
- Abandonment of dependent person 2 (RCW 9A.42.070)
 - Assault 3 (RCW 9A.36.031)
 - Assault of a Child 3 (RCW 9A.36.140)
 - Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
 - Burglary 2 (RCW 9A.52.030)
 - Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
 - Criminal Gang Intimidation (RCW 9A.46.120)
 - Criminal Mistreatment 2 (RCW 9A.42.030)
 - Custodial Assault (RCW 9A.36.100)
 - Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
 - Escape 2 (RCW 9A.76.120)
 - Extortion 2 (RCW 9A.56.130)

- Harassment (RCW 9A.46.020)
 - Intimidating a Public Servant (RCW 9A.76.180)
 - Introducing Contraband 2 (RCW 9A.76.150)
 - Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6))
 - Malicious Injury to Railroad Property (RCW 81.60.070)
 - Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
 - Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
 - Patronizing a Juvenile Prostitute (RCW 9.68A.100)
 - Perjury 2 (RCW 9A.72.030)
 - Possession of Incendiary Device (RCW 9.40.120)
 - Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
 - Promoting Prostitution 2 (RCW 9A.88.080)
 - Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
 - Securities Act violation (RCW 21.20.400)
 - Tampering with a Witness (RCW 9A.72.120)
 - Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
 - Theft of Livestock 2 (RCW 9A.56.080)
 - Unlawful Imprisonment (RCW 9A.40.040)
 - Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))
 - Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
 - Willful Failure to Return from Work Release (RCW 72.65.070)
- II
- Computer Trespass 1 (RCW 9A.52.110)
 - Counterfeiting (RCW 9.16.035(3))
 - Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
 - Escape from Community Custody (RCW 72.09.310)
 - Health Care False Claims (RCW 48.80.030)

- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine or flunitrazepam) (RCW 69.50.401(d))
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand

- five hundred dollars) (RCW 9A.56.096(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- Vehicle Prowl I (RCW 9A.52.095)

Sec. 3. RCW 13.40.0357 and 1998 c 290 s 5 are each amended to read as follows:

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
Arson and Malicious Mischief		
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (<\$50 is E class) (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
A	Possession of Incendiary Device (9.40.120)	B+
Assault and Other Crimes Involving Physical Harm		
A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+

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	Burglary and Trespass	
B+	Burglary 1 (9A.52.020)	C+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E
	Drugs	
E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030)	D+
E	Possession of Legend Drug (69.41.030)	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(a)(1) (i) or (ii))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(a)(1)(iii))	C
E	Possession of Marihuana <40 grams (69.50.401(e))	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C
C+	Sale of Controlled Substance for Profit (69.50.410)	C+
E	Unlawful Inhalation (9.47A.020)	E
B	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.401(b)(1) (i) or (ii))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic	

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	Counterfeit Substances	
	(69.50.401(b)(1) (iii), (iv), (v))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance	
	(69.50.401(d))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance	
	(69.50.401(c))	C
	Firearms and Weapons	
B	Theft of Firearm (9A.56.300)	C
B	Possession of Stolen Firearm (9A.56.310)	C
E	Carrying Loaded Pistol Without Permit (9.41.050)	E
C	Possession of Firearms by Minor (<18) (9.41.040(1)(b)(iii))	C
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E
	Homicide	
A+	Murder 1 (9A.32.030)	A
A+	Murder 2 (9A.32.050)	B+
B+	Manslaughter 1 (9A.32.060)	C+
C+	Manslaughter 2 (9A.32.070)	D+
B+	Vehicular Homicide (46.61.520)	C+
	Kidnapping	
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
	Obstructing Governmental Operation	
D	Obstructing a Law Enforcement Officer (9A.76.020)	E
E	Resisting Arrest (9A.76.040)	E
B	Introducing Contraband 1 (9A.76.140)	C
C	Introducing Contraband 2 (9A.76.150)	D

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E	Introducing Contraband 3 (9A.76.160)	E
B+	Intimidating a Public Servant (9A.76.180)	C+
B+	Intimidating a Witness (9A.72.110)	C+
	Public Disturbance	
C+	Riot with Weapon (9A.84.010)	D+
D+	Riot Without Weapon (9A.84.010)	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
	Sex Crimes	
A	Rape 1 (9A.44.040)	B+
A-	Rape 2 (9A.44.050)	B+
C+	Rape 3 (9A.44.060)	D+
A-	Rape of a Child 1 (9A.44.073)	B+
B+	Rape of a Child 2 (9A.44.076)	C+
B	Incest 1 (9A.64.020(1))	C
C	Incest 2 (9A.64.020(2))	D
D+	Indecent Exposure (Victim <14) (9A.88.010)	E
E	Indecent Exposure (Victim 14 or over) (9A.88.010)	E
B+	Promoting Prostitution 1 (9A.88.070)	C+
C+	Promoting Prostitution 2 (9A.88.080)	D+
E	O & A (Prostitution) (9A.88.030)	E
B+	Indecent Liberties (9A.44.100)	C+
A-	Child Molestation 1 (9A.44.083)	B+
B	Child Molestation 2 (9A.44.086)	C+
	Theft, Robbery, Extortion, and Forgery	
B	Theft 1 (9A.56.030)	C
C	Theft 2 (9A.56.040)	D
D	Theft 3 (9A.56.050)	E
B	Theft of Livestock (9A.56.080)	C
C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200)	B+
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+

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B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E
C	Taking Motor Vehicle Without Owner's Permission (9A.56.070)	D
	Motor Vehicle Related Crimes	
E	Driving Without a License (46.20.005)	E
B+	<u>Hit and Run - Death</u> (46.52.020(4)(a))	C+
C	Hit and Run - Injury (46.52.020(4)(b))	D
D	Hit and Run-Attended (46.52.020(5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
	Other	
B	Bomb Threat (9.61.160)	C
C	Escape 1' (9A.76.110)	C
C	Escape 2' (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E

V Violation of Order of Restitution,
Community Supervision, or
Confinement (13.40.200) V

Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

- 1st escape or attempted escape during 12-month period - 4 weeks confinement
- 2nd escape or attempted escape during 12-month period - 8 weeks confinement
- 3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, or C.

**OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE**

	A+	180 WEEKS TO AGE 21 YEARS			
	A	103 WEEKS TO 129 WEEKS			
	A-	15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	152-65 WEEKS	180-100 WEEKS	1103-129 WEEKS
Current Offense Category	B+	15-36 WEEKS	152-65 WEEKS	180-100 WEEKS	1103-129 WEEKS
	B	LOCAL SANCTIONS (LS)	115-36 WEEKS	152-65 WEEKS	115-36 WEEKS
	C+	LS	115-36 WEEKS	115-36 WEEKS	
	C	LS	Local Sanctions: 0 to 30 Days	115-36 WEEKS	
	D+	LS	0 to 12 Months Community Supervision 0 to 150 Hours Community Service		
	D	LS	\$0 to \$500 Fine		

E	LS					
		0	1	2	3	4 or more
		PRIOR ADJUDICATIONS				

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

OPTION B

CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(~~(5)~~) (4) and 13.40.165.

OR

OPTION C

MANIFEST INJUSTICE

If the court determines that a disposition under option A or B would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2).

Passed the Senate March 6, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 67

[Senate Bill 6121]

DIABETES COST REDUCTION ACT—CONTINUATION

AN ACT Relating to the continuation of the diabetes cost reduction act; and repealing RCW 43.131.391 and 43.131.392.

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

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

(1) RCW 43.131.391 (Diabetes cost reduction act—Termination) and 1997 c 276 s 7; and

(2) RCW 43.131.392 (Diabetes cost reduction act—Repeal) and 1997 c 276 s 8.

Passed the Senate February 9, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 68

[Senate Bill 6190]

EMINENT DOMAIN—PUBLIC USE DISPUTES

AN ACT Relating to the expeditious resolution of public use disputes in eminent domain proceedings; amending RCW 8.08.040; creating a new section; and providing an expiration date.

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

Sec. 1. RCW 8.08.040 and 1971 c 81 s 37 are each amended to read as follows:

At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises or other property described in said petition have been duly served with said notice as prescribed herein, and shall be further satisfied by competent proof that the contemplated use for which the lands, real estate, premises, or other property sought to be appropriated is a public use of the county, the court or judge thereof may make and enter an order adjudicating that the contemplated use is really a public use of the county, and which order shall be final unless review thereof to the supreme court or the court of appeals be taken within five days after entry of such order, adjudicating that the contemplated use for which the lands, real estate, premises or other property sought to be appropriated is really a public use of the county, and directing that determination be had of the compensation and damages to be paid all parties interested in the land, real estate, premises, or other property sought to be appropriated for the taking and appropriation thereof, together with the injury, if any, caused by such taking or appropriation to the remainder of the lands, real estate, premises, or other property from which the same is to be taken and appropriated, after offsetting against any and all such compensation and damages, special benefits, if any, accruing to such remainder by reason of such appropriation and use by the county of such lands, real estate, premises, and other property described in the petition; such determination to be made by a jury, unless waived, in which event the compensation or damages shall be determined by the court

without a jury. Proceedings under this chapter shall have precedence over all cases in court except criminal cases.

NEW SECTION. Sec. 2. (1) The legislature finds that there is a need to study the use of eminent domain and its application under contemporary jurisprudence. It is the intent of the legislature to create a joint study group to study ways to expedite resolution of public use disputes in eminent domain proceedings.

(2) The study group shall consist of two legislators from each caucus of the senate and house of representatives, as appointed by leaders of the each caucus respectively.

(3) The study group shall review the need, use, application, and effects of eminent domain, current case law on eminent domain, the impact on the courts of the exercise of eminent domain, and ways to expedite resolution of public use disputes in eminent domain proceedings.

(4) The study group shall review other issues related to eminent domain as desired by the study group.

(5) House office of program research and senate committee services shall provide staff and administrative support for the study group.

(6) This section shall expire December 31, 2000.

Passed the Senate March 6, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 69

[Substitute Senate Bill 6210]

OIL SPILL PREVENTION AND RESPONSE

AN ACT Relating to technical and clarifying amendments relating to the oil spill prevention and response statutes; amending RCW 88.46.010, 88.46.020, 88.46.030, 88.46.040, 88.46.050, 88.46.060, 88.46.070, 88.46.080, 88.46.090, 88.46.100, 88.46.120, 88.46.160, 88.46.170, 88.46.200, 90.56.010, 90.56.060, 90.56.080, 90.56.100, 90.56.200, 90.56.210, 90.56.370, 90.56.510, 90.56.540, 90.56.560, 82.23B.020, 43.211.010, 43.211.030, 43.211.040, 88.40.011, 88.40.020, 88.40.030, 88.40.040, 90.56.310, and 43.211.005; creating a new section; decodifying RCW 43.211.005, 88.46.150, 88.46.924, 88.46.925, and 88.46.927; and repealing RCW 88.46.140, 90.56.903, and 88.46.922.

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

Sec. 1. RCW 88.46.010 and 1992 c 73 s 18 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) (~~"Administrator" means the administrator of the office of marine safety created in RCW 43.211.010.~~

~~—(2))~~ "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The ~~((administrator's))~~ director's

determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

~~((3))~~ (2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the ~~((administrator))~~ director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

~~((4))~~ (3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

~~((5))~~ (4) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

~~((6))~~ (5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

~~((7))~~ (6) "Department" means the department of ecology.

~~((8))~~ (7) "Director" means the director of the department of ecology.

~~((9))~~ (8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

~~((10))~~ (9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

~~((11))~~ (10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

~~((12))~~ (11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

~~((13)) "Office" means the office of marine safety established by RCW 43.211.010.~~

~~(14))~~ (12) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

~~((15))~~ (13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

~~((16))~~ (14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

~~((17))~~ (15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

~~((18))~~ (16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

~~((19))~~ (17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

~~((20))~~ (18) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

~~((21))~~ (19) "Spill" means an unauthorized discharge of oil into the waters of the state.

~~((22))~~ (20) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

~~((23))~~ (21) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands

adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

~~((24))~~ (22) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

Sec. 2. RCW 88.46.020 and 1991 c 200 s 415 are each amended to read as follows:

In carrying out the purposes of this chapter, including the adoption of rules for contingency plans, the ~~((administrator))~~ director shall to the greatest extent practicable implement this chapter in a manner consistent with federal law.

Sec. 3. RCW 88.46.030 and 1991 c 200 s 416 are each amended to read as follows:

(1) All tank vessels entering the navigable waters of the state shall be subject to inspection to assure that they comply with all applicable federal and state standards.

(2) The ~~((office))~~ department shall review the tank vessel inspection programs conducted by the United States coast guard and other federal agencies to determine if the programs as actually operated by those agencies provide the best achievable protection to the waters of the state. If the ~~((office))~~ department determines that the tank vessel inspection programs conducted by these agencies are not adequate to protect the state's waters, it shall adopt rules for a state tank vessel inspection program. The ~~((office))~~ department shall adopt rules providing for a random review of individual tank vessel inspections conducted by federal agencies. The ~~((office))~~ department may accept a tank vessel inspection report issued by another state if that state's tank vessel inspection program is determined by the ~~((office))~~ department to be at least as protective of the public health and the environment as the program adopted by the ~~((office))~~ department.

(3) The state tank vessel inspection program shall ensure that all tank vessels entering state waters are inspected at least annually. To the maximum extent feasible, the state program shall consist of the monitoring of existing tank vessel inspection programs conducted by the federal government. The ~~((office))~~ department shall consult with the coast guard regarding the tank vessel inspection program. Any tank vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port.

(4) Any violation of coast guard or other federal regulations uncovered during a state tank vessel inspection shall be immediately reported to the appropriate agency.

Sec. 4. RCW 88.46.040 and 1991 c 200 s 417 are each amended to read as follows:

(1) The owner or operator for each tank vessel shall prepare and submit to the ~~((office))~~ department an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the ~~((office))~~

department in the time and manner directed by the ~~((office, but not later than January 1, 1993))~~ department. The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to RCW 88.46.060. The ~~((office))~~ department may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements of this chapter. The ~~((office))~~ department, by rule, shall establish standards for spill prevention plans. ~~((The rules shall be adopted not later than July 1, 1992.))~~

(2) The spill prevention plan for a tank vessel or a fleet of tank vessels operated by the same operator shall:

(a) Establish compliance with the federal oil pollution act of 1990 and state and federal financial responsibility requirements, if applicable;

(b) State all discharges of oil of more than twenty-five barrels from the vessel within the prior five years and what measures have been taken to prevent a reoccurrence;

(c) Describe all accidents, collisions, groundings, and near miss incidents in which the vessel has been involved in the prior five years, analyze the causes, and state the measures that have been taken to prevent a reoccurrence;

(d) Describe the vessel operations with respect to staffing standards;

(e) Describe the vessel inspection program carried out by the owner or operator of the vessel;

(f) Describe the training given to vessel crews with respect to spill prevention;

(g) Establish compliance with federal drug and alcohol programs;

(h) Describe all spill prevention technology that has been incorporated into the vessel;

(i) Describe the procedures used by the vessel owner or operator to ensure English language proficiency of at least one bridge officer while on duty in waters of the state;

(j) Describe relevant prevention measures incorporated in any applicable regional marine spill safety plan that have not been adopted and the reasons for that decision; and

(k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the ~~((office))~~ department.

(3) The ~~((office))~~ department shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that the plan meets the requirements of this section and rules adopted by the ~~((office))~~ department.

(4) Upon approval of a prevention plan, the ~~((office))~~ department 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))~~ department determines should be included.

(5) The approval of a prevention plan shall be valid for five years. An owner or operator of a tank vessel shall notify the ~~((office))~~ department in writing immediately of any significant change of which it is aware affecting its prevention

plan, including changes in any factor set forth in this section or in rules adopted by the ~~((office))~~ department. The ~~((office))~~ department may require the owner or operator to update a prevention plan as a result of these changes.

(6) The ~~((office))~~ department by rule shall require prevention plans to be reviewed, updated, if necessary, and resubmitted to the ~~((office))~~ department at least once every five years.

(7) Approval of a prevention plan by the ~~((office))~~ department 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.

(8) This section does not authorize the ~~((office))~~ department to modify the terms of a collective bargaining agreement.

Sec. 5. RCW 88.46.050 and 1992 c 73 s 19 are each amended to read as follows:

(1) In order to ensure the safety of marine transportation within the navigable waters of the state and to protect the state's natural resources, the ~~((administrator))~~ department shall adopt rules ~~((by July 1, 1992;))~~ for determining whether cargo vessels and passenger vessels entering the navigable waters of the state pose a substantial risk of harm to the public health and safety and the environment.

(2) The rules ~~((adopted by the administrator pursuant to this section))~~ may include ~~((, but are not limited to the following))~~:

(a) Examining available information sources for evidence that a cargo or passenger vessel may pose a substantial risk to safe marine transportation or the state's natural resources. Information sources may include: Vessel casualty lists, United States coast guard casualty reports, maritime insurance ratings, the index of contingency plans compiled by the department of ecology, other data gathered by the ~~((office or the))~~ maritime commission, or any other resources;

(b) Requesting the United States coast guard to deny a cargo vessel or passenger vessel entry into the navigable waters of the state, if the vessel poses a substantial environmental risk;

(c) Notifying the state's spill response system that a cargo or passenger vessel entering the state's navigable waters poses a substantial environmental risk;

(d) Inspecting a cargo or passenger vessel that may pose a substantial environmental risk, to determine whether the vessel complies with applicable state or federal laws. Any vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port; and

(e) Enforcement actions.

Sec. 6. RCW 88.46.060 and 1995 c 148 s 3 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))~~ department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The

((office)) department 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)) department, 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, 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)) of marine safety adopted rules for contingency plans prior to July 1, 1992, the description of archaeologically sensitive areas shall only be required when the ((office)) department 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~~) department within six months after the (~~office~~) department 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~~) department within eighteen months after the (~~office~~) department has adopted rules under subsection (1) of this section. The (~~office~~) department 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 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~~) department, 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 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~~) department, 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~~) department, 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))~~ department may be accepted by the ~~((office))~~ department as a contingency plan under this section. The ~~((office))~~ department 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))~~ department 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))~~ department 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))~~ department 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))~~ department determines should be included.

(8) An owner or operator of a covered vessel shall notify the ~~((office))~~ department 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))~~ department. The ~~((office))~~ department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The ~~((office))~~ department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the ~~((office))~~ department at least once every five years.

(10) Approval of a contingency plan by the ~~((office))~~ department 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.

Sec. 7. RCW 88.46.070 and 1992 c 73 s 21 are each amended to read as follows:

(1) The provisions of prevention plans and contingency plans approved by the ~~((office))~~ department pursuant to this chapter shall be legally binding on those persons submitting them to the ~~((office))~~ department and on their successors, assigns, agents, and employees. The superior court shall have jurisdiction to restrain a violation of, compel specific performance of, or otherwise to enforce such plans upon application by the ~~((office))~~ department. The ~~((office))~~ department may issue an order pursuant to chapter 34.05 RCW requiring compliance with a contingency plan or a prevention plan and may impose administrative penalties for failure to comply with a plan.

(2) If the ~~((administrator))~~ director believes a person has violated or is violating or creates a substantial potential to violate the provisions of this chapter, the ~~((administrator))~~ director shall notify the person of the ~~((administrator's))~~ director's determination by registered mail. The determination shall not constitute an order or directive under RCW 43.21B.310. Within thirty days from the receipt of notice of the determination, the person shall file with the ~~((administrator))~~ director a full report stating what steps have been and are being taken to comply with the determination of the ~~((administrator))~~ director. The ~~((administrator))~~ director shall issue an order or directive, as the ~~((administrator))~~ director deems appropriate under the circumstances, and shall notify the person by registered mail.

(3) If the ~~((administrator))~~ director believes immediate action is necessary to accomplish the purposes of this chapter, the ~~((administrator))~~ director may issue an order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (2) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed.

Sec. 8. RCW 88.46.080 and 1992 c 73 s 22 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state a covered vessel without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990. The first conviction under this section shall be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction shall be a class C felony under chapter 9A.20 RCW.

(2) It shall not be unlawful for the owner or operator to operate a covered vessel if:

(a) The covered vessel is not required to have a contingency plan, spill prevention plan, or financial responsibility;

(b) All required plans have been submitted to the ~~((office))~~ department as required by this chapter and rules adopted by the ~~((office))~~ department and the ~~((office))~~ department is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(3) A person may rely on a copy of the statement issued by the ~~((office))~~ department pursuant to RCW 88.46.060 as evidence that a vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 that a vessel has an approved prevention plan.

(4) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the ~~((administrator))~~ director or a court in pursuance thereof shall be deemed guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

Sec. 9. RCW 88.46.090 and 1992 c 73 s 23 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to enter the waters of the state without an approved contingency plan required by RCW 88.46.060, a spill prevention plan required by RCW 88.46.040, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990. The ~~((office))~~ department may deny entry onto the waters of the state to any covered vessel that does not have a required contingency or spill prevention plan or financial responsibility.

(2) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to transfer oil to or from an onshore or offshore facility that does not have an approved contingency plan required under RCW 90.56.210, a spill prevention plan required by RCW 90.56.200, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(3) The ~~((administrator))~~ director may assess a civil penalty of up to one hundred thousand dollars against the owner or operator of a vessel who is in violation of subsection (1) or (2) of this section. Each day that the owner or operator of a covered vessel is in violation of this section shall be considered a separate violation.

(4) It shall not be unlawful for a covered vessel to operate on the waters of the state if:

(a) A contingency plan, a prevention plan, or financial responsibility is not required for the covered vessel;

(b) A contingency plan and prevention plan has been submitted to the ~~((office))~~ department as required by this chapter and rules adopted by the ~~((office))~~ department and the ~~((office))~~ department is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(5) Any person may rely on a copy of the statement issued by the ~~((office))~~ department to RCW 88.46.060 as evidence that the vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 as evidence that the vessel has an approved spill prevention plan.

(6) Except for violations of subsection (1) or (2) of this section, any person who violates the provisions of this chapter or rules or orders adopted or issued pursuant thereto, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for each violation. Each violation is a separate offense, and in case of a continuing violation, every day's continuance is a separate violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this subsection and subject to penalty. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and the environment in addition to other relevant factors. The penalty shall be imposed pursuant to the procedures set forth in RCW 43.21B.300.

Sec. 10. RCW 88.46.100 and 1995 c 391 s 9 are each amended to read as follows:

(1) In order to assist the state in identifying areas of the navigable waters of the state needing special attention, the owner or operator of a covered vessel shall notify the coast guard within one hour:

(a) Of the disability of the covered vessel if the disabled vessel is within twelve miles of the shore of the state; and

(b) Of a collision or a near miss incident within twelve miles of the shore of the state.

(2) The state military department and the ~~((office))~~ department shall request the coast guard to notify the state military department as soon as possible after the coast guard receives notice of a disabled covered vessel or of a collision or near miss incident within twelve miles of the shore of the state. The ~~((office))~~ department shall negotiate an agreement with the coast guard governing procedures for coast guard notification to the state regarding disabled covered vessels and collisions and near miss incidents.

(3) The ~~((office))~~ department shall prepare a summary of the information collected under this section and provide the summary to the regional marine safety committees, the coast guard, and others in order to identify problems with the marine transportation system.

(4) For the purposes of this section:

(a) A tank vessel or cargo vessel is considered disabled if any of the following occur:

- (i) Any accidental or intentional grounding;
- (ii) The total or partial failure of the main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel;
- (iii) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including but not limited to, fire, flooding, or collision with another vessel;
- (iv) Any other occurrence that creates the serious possibility of an oil spill or an occurrence that may result in such a spill.

(b) A barge is considered disabled if any of the following occur:

- (i) The towing mechanism becomes disabled;
- (ii) The towboat towing the barge becomes disabled through occurrences defined in (a) of this subsection.

(c) A near miss incident is an incident that requires the pilot or master of a covered vessel to take evasive actions or make significant course corrections in order to avoid a collision with another ship or to avoid a grounding as required by the international rules of the road.

(5) Failure of any person to make a report under this section shall not be used as the basis for the imposition of any fine or penalty.

Sec. 11. RCW 88.46.120 and 1991 c 200 s 425 are each amended to read as follows:

The ~~((office))~~ department may adopt rules including but not limited to standards for spill response equipment to be maintained on tank vessels. The standards adopted under this section shall be consistent with spill response equipment standards adopted by the United States coast guard.

Sec. 12. RCW 88.46.160 and 1991 c 200 s 438 are each amended to read as follows:

Any person or facility conducting ship refueling and bunkering operations, or the lightering of petroleum products, and any person or facility transferring oil between an onshore or offshore facility and a tank vessel shall have containment and recovery equipment readily available for deployment in the event of the discharge of oil into the waters of the state and shall deploy the containment and recovery equipment in accordance with standards adopted by the ~~((office))~~ department. All persons conducting refueling, bunkering, or lightering operations, or oil transfer operations shall be trained in the use and deployment of oil spill containment and recovery equipment. The ~~((office))~~ department shall adopt rules as necessary to carry out the provisions of this section. The rules shall include standards for the circumstances under which containment equipment should be deployed. An onshore or offshore facility shall include the procedures used to contain and recover discharges in the facility's contingency plan. It is the responsibility of the person providing bunkering, refueling, or lightering services

to provide any containment or recovery equipment required under this section. This section does not apply to a person operating a ship for personal pleasure or for recreational purposes.

Sec. 13. RCW 88.46.170 and 1993 c 162 s 1 are each amended to read as follows:

(1) The ~~((office))~~ department shall establish a field operations program to enforce the provisions of this chapter. The field operations program shall include, but is not limited to, the following elements:

- (a) Education and public outreach;
- (b) Review of lightering and bunkering operations to prevent oil spills;
- (c) Evaluation and boarding of tank vessels for compliance with prevention plans prepared pursuant to this chapter;
- (d) Evaluation and boarding of covered vessels that may pose a substantial risk to the public health, safety, and the environment;
- (e) Evaluation and boarding of covered vessels for compliance with rules adopted by the ~~((office))~~ department to implement recommendations of regional marine safety committees; and
- (f) Collection of vessel information to assist in identifying vessels which pose a substantial risk to the public health, safety, and the environment.

(2) The ~~((office))~~ department shall coordinate the field operations program with similar activities of the United States coast guard. To the extent feasible, the ~~((office))~~ department shall coordinate its boarding schedules with those of the United States coast guard to reduce the impact of boardings on vessel operators, to more efficiently use state and federal resources, and to avoid duplication of United States coast guard inspection operations.

(3) In developing and implementing the field operations program, the ~~((office))~~ department shall give priority to activities designed to identify those vessels which pose the greatest risk to the waters of the state. The ~~((office))~~ department shall consult with the marine transportation industry, individuals concerned with the marine environment, other state and federal agencies, and the public in developing and implementing the program required by this section.

Sec. 14. RCW 88.46.200 and 1994 sp.s. c 9 s 854 are each amended to read as follows:

The ~~((administrator))~~ director may appoint ad hoc, advisory marine safety committees to solicit recommendations and technical advice concerning vessel traffic safety. The ~~((office))~~ department may implement recommendations made in regional marine safety plans that are approved by the ~~((office))~~ department and over which the ~~((office))~~ department has authority. If federal authority or action is required to implement the recommendations, the ~~((office))~~ department may petition the appropriate agency or the congress.

Sec. 15. RCW 90.56.010 and 1992 c 73 s 31 are each amended to read as follows:

For purposes of this chapter, the following definitions shall apply unless the context indicates otherwise:

~~(1) ("Administrator" means the administrator of the office of marine safety created in RCW 43.211.010.~~

~~(2))~~ (2) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

~~((3))~~ (2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

~~((4))~~ (3) "Board" means the pollution control hearings board.

~~((5))~~ (4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

~~((6))~~ (5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

~~((7))~~ (6) "Committee" means the preassessment screening committee established under RCW 90.48.368.

~~((8))~~ (7) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

~~((9))~~ (8) "Department" means the department of ecology.

~~((10))~~ (9) "Director" means the director of the department of ecology.

~~((11))~~ (10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

~~((12))~~ (11)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is

operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

~~((13))~~ (12) "Fund" means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

~~((14))~~ (13) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

~~((15))~~ (14) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

~~((16))~~ (15) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

~~((17))~~ (16) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the provisions of this chapter and collecting for damages caused by a discharge.

~~((18))~~ (17) "Oil" or "oils" means naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

~~((19))~~ (18) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

~~((20))~~ (19) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

~~((21))~~ (20)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

~~((22))~~ (21) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

~~((23))~~ (22) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

~~((24))~~ (23) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

~~((25))~~ (24) "Spill" means an unauthorized discharge of oil or hazardous substances into the waters of the state.

~~((26))~~ (25) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

~~((27))~~ (26) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

~~((28))~~ (27) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

Sec. 16. RCW 90.56.060 and 1991 c 200 s 107 are each amended to read as follows:

(1) The department shall prepare and annually update a state-wide master oil and hazardous substance spill prevention and contingency plan. In preparing the plan, the department shall consult with an advisory committee representing diverse interests concerned with oil and hazardous substance spills, including ~~((the office of marine safety,))~~ the United States coast guard, the federal environmental protection agency, state agencies, local governments, port districts, private facilities, environmental organizations, oil companies, shipping companies, containment and cleanup contractors, tow companies, and hazardous substance manufacturers.

(2) The state master plan prepared under this section shall at a minimum:

(a) Take into consideration the elements of oil spill prevention and contingency plans approved or submitted for approval pursuant to this chapter and chapter 88.46 RCW and oil and hazardous substance spill contingency plans prepared pursuant to other state or federal law or prepared by federal agencies and regional entities;

(b) State the respective responsibilities as established by relevant statutes and rules of each of the following in the prevention of and the assessment, containment,

and cleanup of a worst case spill of oil or hazardous substances into the environment of the state: (i) State agencies; (ii) local governments; (iii) appropriate federal agencies; (iv) facility operators; (v) property owners whose land or other property may be affected by the oil or hazardous substance spill; and (vi) other parties identified by the department as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance spill;

(c) State the respective responsibilities of the parties identified in (b) of this subsection in an emergency response;

(d) Identify actions necessary to reduce the likelihood of spills of oil and hazardous substances;

(e) Identify and obtain mapping of environmentally sensitive areas at particular risk to oil and hazardous substance spills; and

(f) Establish an incident command system for responding to oil and hazardous substances spills.

(3) In preparing and updating the state master plan, the department shall:

(a) Consult with federal, provincial, municipal, and community officials, other state agencies, the state of Oregon, and with representatives of affected regional organizations;

(b) Submit the draft plan to the public for review and comment;

(c) Submit to the appropriate standing committees of the legislature for review, not later than November 1 of each year, the plan and any annual revision of the plan; and

(d) Require or schedule unannounced oil spill drills as required by RCW 90.56.260 to test the sufficiency of oil spill contingency plans approved under RCW 90.56.210.

Sec. 17. RCW 90.56.080 and 1991 c 200 s 109 are each amended to read as follows:

~~((Not later than twelve months after May 15, 1991,))~~ The division of fire protection services shall establish and manage the Washington oil and hazardous substances incident response training and education program to provide approved classes in hazardous substance response, taught by trained instructors. To carry out this program, the division of fire protection services shall:

(1) Adopt rules necessary to implement the program;

(2) Establish a training and education program by developing the curriculum to be used in the program in colleges, academies, and other educational institutions;

(3) Provide training to local oil and hazardous materials emergency response personnel; and

(4) Establish and collect admission fees and other fees that may be necessary to the program.

Sec. 18. RCW 90.56.100 and 1998 c 245 s 175 are each amended to read as follows:

(1) The Washington wildlife rescue coalition ~~((shall be))~~ is established for the purpose of coordinating the rescue and rehabilitation of wildlife injured or endangered by oil spills or the release of other hazardous substances into the environment.

(2) The Washington wildlife rescue coalition shall be composed of:

(a) A representative of the department of fish and wildlife designated by the director of fish and wildlife. The department of fish and wildlife shall be designated as lead agency in the operations of the coalition. The coalition shall be chaired by the representative from the department of fish and wildlife;

(b) A representative of the department of ecology designated by the director;

(c) A representative of the ~~((department of community, trade, and economic development))~~ Washington military department emergency management ~~((program))~~ division, designated by the director of ~~((community, trade, and economic development))~~ the Washington military department;

(d) A licensed veterinarian, with experience and training in wildlife rehabilitation, appointed by the veterinary board of governors;

(e) ~~((The director of the Washington conservation corps;~~

~~—(f))~~ A lay person, with training and experience in the rescue and rehabilitation of wildlife appointed by the department; and

~~((g))~~ (f) A person designated by the legislative authority of the county where oil spills or spills of other hazardous substances may occur. This member of the coalition shall serve on the coalition until wildlife rescue and rehabilitation is completed in that county. The completion of any rescue or rehabilitation project shall be determined by the director of fish and wildlife.

(3) The duties of the Washington wildlife rescue coalition ~~((shall be))~~ are to:

(a) Develop an emergency mobilization plan to rescue and rehabilitate waterfowl and other wildlife that are injured or endangered by an oil spill or the release of other hazardous substances into the environment;

(b) Develop and maintain a resource directory of persons, governmental agencies, and private organizations that may provide assistance in an emergency rescue effort;

(c) Provide advance training and instruction to volunteers in rescuing and rehabilitating waterfowl and wildlife injured or endangered by oil spills or the release of other hazardous substances into the environment. The training may be provided through grants to community colleges or to groups that conduct programs for training volunteers. The coalition representatives from the agencies described in subsection (2) of this section shall coordinate their training efforts ~~((with the director of the Washington conservation corps))~~ and work to provide training opportunities for young citizens;

(d) Obtain and maintain equipment and supplies used in emergency rescue efforts.

(4)(a) Expenses for the coalition may be provided by the coastal protection fund administered according to RCW 90.48.400.

(b) The coalition is encouraged to seek grants, gifts, or donations from private sources in order to carry out the provisions of this section and RCW 90.56.110. Any private funds donated to the commission shall be deposited into the wildlife rescue account hereby created within the wildlife fund as authorized under Title 77 RCW.

Sec. 19. RCW 90.56.200 and 1991 c 200 s 201 are each amended to read as follows:

(1) The owner or operator for each onshore and offshore facility shall prepare and submit to the department an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the department in the time and manner directed by the department (~~(, but not later than January 1, 1993)~~). The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to RCW 90.56.210. The department may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements of this chapter. The department, by rule, shall establish standards for spill prevention plans. (~~The rules shall be adopted not later than July 1, 1992.~~)

(2) The spill prevention plan for an onshore or offshore facility shall:

(a) Establish compliance with the federal oil pollution act of 1990, if applicable, and financial responsibility requirements under federal and state law;

(b) Certify that supervisory and other key personnel in charge of transfer, storage, and handling of oil have received certification pursuant to RCW 90.56.220;

(c) Certify that the facility has an operations manual required by RCW 90.56.230;

(d) Certify the implementation of alcohol and drug use awareness programs;

(e) Describe the facility's maintenance and inspection program and contain a current maintenance and inspection record of the storage and transfer facilities and related equipment;

(f) Describe the facility's alcohol and drug treatment programs;

(g) Describe spill prevention technology that has been installed, including overflow alarms, automatic overflow cut-off switches, secondary containment facilities, and storm water retention, treatment, and discharge systems;

(h) Describe any discharges of oil to the land or the water of more than twenty-five barrels in the prior five years and the measures taken to prevent a reoccurrence;

(i) Describe the procedures followed by the facility to contain and recover any oil that spills during the transfer of oil to or from the facility;

(j) Provide for the incorporation into the facility during the period covered by the plan of those measures that will provide the best achievable protection for the public health and the environment; and

(k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the department.

(3) The department shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that the plan meets the requirements of this section and rules adopted by the department.

(4) Upon approval of a prevention plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities covered by the plan, and other information the department determines should be included.

(5) The approval of a prevention plan shall be valid for five years. An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its prevention plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a prevention plan as a result of these changes.

(6) The department by rule shall require prevention plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(7) Approval of a prevention plan by the department 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.

(8) This section does not authorize the department to modify the terms of a collective bargaining agreement.

Sec. 20. RCW 90.56.210 and 1992 c 73 s 33 are each amended to read as follows:

(1) Each onshore and offshore facility shall have a contingency plan for the containment and cleanup of oil spills from the facility 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 department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department 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 facility 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 department 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 oil 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, wildlife))~~ 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 department has adopted rules for contingency plans prior to July 1, 1992, the description of archaeologically sensitive areas shall only be required when the department 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) Provide arrangements for the repositioning of oil 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;

(j) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(k) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(l) Until a spill prevention plan has been submitted pursuant to RCW 90.56.200, 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 facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(m) 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

(n) If the department 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 following shall submit contingency plans to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section:

(i) Onshore facilities capable of storing one million gallons or more of oil; and

(ii) Offshore facilities.

(b) Contingency plans for all other onshore and offshore facilities shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a facility shall submit the contingency plan for the facility.

(b) A person who has contracted with a facility to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any facility for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility.

(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 department may be accepted by the department as a contingency plan under this section. The department 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 department 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 department; 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 department 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 department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the

facilities or vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a facility shall notify the department 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 department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department 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.

Sec. 21. RCW 90.56.370 and 1990 c 116 s 18 are each amended to read as follows:

(1) Any person owning oil or having control over oil that enters the waters of the state in violation of RCW 90.56.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry.

(2) In any action to recover damages resulting from the discharge of oil in violation of RCW 90.56.320, the owner or person having control over the oil shall be relieved from strict liability, without regard to fault, if that person can prove that the discharge was caused solely by:

- (a) An act of war or sabotage;
- (b) An act of God;
- (c) Negligence on the part of the United States government; or
- (d) Negligence on the part of the state of Washington.

(3) The liability established in this section shall in no way affect the rights which: (a) The owner or other person having control over the oil may have against any person whose acts may in any way have caused or contributed to the discharge of oil, or (b) the state of Washington may have against any person whose actions may have caused or contributed to the discharge of oil.

~~((4) The chapter 116, Laws of 1990 changes to subsection (2) of this section requiring the defenses in that subsection to be the sole causes of the discharge, and the text of subsection (2)(b) of this section shall apply prospectively and not retroactively after June 7, 1990.))~~

Sec. 22. RCW 90.56.510 and 1999 sp.s. c 7 s 2 are each amended to read as follows:

(1) The oil spill ((administration)) prevention account is created in the state treasury. All receipts from RCW 82.23B.020(2) shall be deposited in the account. Moneys from the account may be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. If, on the first day of any calendar month, the balance of the oil spill response account is greater than

nine million dollars and the balance of the oil spill ((administration)) prevention account exceeds the unexpended appropriation for the current biennium, then the tax under RCW 82.23B.020(2) shall be suspended on the first day of the next calendar month until the beginning of the following biennium, provided that the tax shall not be suspended during the last six months of the biennium. If the tax imposed under RCW 82.23B.020(2) is suspended during two consecutive biennia, the department shall by November 1st after the end of the second biennium, recommend to the appropriate standing committees an adjustment in the tax rate. For the biennium ending June 30, 1999, and the biennium ending June 30, 2001, the state treasurer may transfer a total of up to one million dollars from the oil spill response account to the oil spill ((administration)) prevention account to support appropriations made from the oil spill ((administration)) prevention account in the omnibus appropriations act adopted not later than June 30, 1999.

(2) Expenditures from the oil spill ((administration)) prevention account shall be used exclusively for the administrative costs related to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. Starting with the 1995-1997 biennium, the legislature shall give activities of state agencies related to prevention of oil spills priority in funding from the oil spill ((administration)) prevention account. Costs of ((administration)) prevention include the costs of:

- (a) Routine responses not covered under RCW 90.56.500;
- (b) Management and staff development activities;
- (c) Development of rules and policies and the state-wide plan provided for in RCW 90.56.060;
- (d) Facility and vessel plan review and approval, drills, inspections, investigations, enforcement, and litigation;
- (e) Interagency coordination and public outreach and education;
- (f) Collection and administration of the tax provided for in chapter 82.23B RCW; and
- (g) Appropriate travel, goods and services, contracts, and equipment.

Sec. 23. RCW 90.56.540 and 1991 c 200 s 605 are each amended to read as follows:

(1) A person is guilty of operating a vessel while under the influence of intoxicating liquor or drugs if the person operates a covered vessel within this state while:

(a) The person has 0.06 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW ((88.16.230)) 90.56.550; or

(b) The person has 0.06 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood made under RCW ((88.16.230)) 90.56.550; or

(c) The person is under the influence of or affected by intoxicating liquor or drugs; or

(d) The person is under the combined influence of or affected by intoxicating liquor or drugs.

(2) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(3) Operating a vessel while intoxicated is a class C felony under chapter 9A.20 RCW.

Sec. 24. RCW 90.56.560 and 1991 c 200 s 607 are each amended to read as follows:

No physician, registered nurse, qualified technician, or hospital, or duly licensed clinical laboratory employing or using services of the physician, registered nurse, or qualified technician, may incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under RCW ((88-16-230)) 90.56.550. This section shall not relieve any physician, registered nurse, qualified technician, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care.

Sec. 25. RCW 82.23B.020 and 1999 sp.s. c 7 s 1 are each amended to read as follows:

(1) An oil spill response tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of four cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter shall be collected by the marine terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the imposition of the taxes, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine terminal operator shall relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter shall be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected shall be stated separately from other charges made by the marine terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine terminal operator or to the department, shall constitute a debt from the taxpayer to the marine terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, shall be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department shall give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department shall provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator shall relieve the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section shall be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill ~~((administration))~~ prevention account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management shall determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and shall not be used to challenge the validity of any tax imposed under this chapter. The office of financial management shall promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than nine million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than eight million dollars.

NEW SECTION. **Sec. 26.** The section 18(2), chapter 116, Laws of 1990 changes requiring the defenses in that subsection to be the sole causes of the discharge, and the text of section 18(2)(b), chapter 116, Laws of 1990 shall apply prospectively and not retroactively after June 7, 1990.

Sec. 27. RCW 43.211.010 and 1992 c 73 s 4 are each amended to read as follows:

(1) There is hereby created ~~((an agency of state government to be known as the office of marine safety. The office))~~ within the department of ecology an oil spill prevention program. For the program, the department shall be vested with all powers and duties transferred to it from the office of marine safety and such other powers and duties as may be authorized by law. The main administrative office ~~((of))~~ for the ~~((office))~~ program shall be located in the city of Olympia. The ~~((administrator))~~ director may establish administrative facilities in other locations, if deemed necessary for the efficient operation of the ~~((office))~~ program, and if consistent with the principles set forth in subsection (2) of this section.

(2) The ~~((office of marine safety))~~ oil spill prevention program shall be organized consistent with the goals of providing state government with a focus in marine transportation and serving the people of this state. The legislature recognizes that the ~~((administrator))~~ director needs sufficient organizational flexibility to carry out the ~~((office's))~~ program's various duties. To the extent practical, the ~~((administrator))~~ director shall consider the following organizational principles:

(a) Clear lines of authority which avoid functional duplication within and between subelements of the ~~((office))~~ program;

(b) A clear and simplified organizational design promoting accessibility, responsiveness, and accountability to the legislature, the consumer, and the general public; and

(c) Maximum span of control without jeopardizing adequate supervision.

(3) The ~~((office))~~ department, through the program, shall provide leadership and coordination in identifying and resolving threats to the safety of marine transportation and the impact of marine transportation on the environment:

(a) Working with other state agencies and local governments to strengthen the state and local governmental partnership in providing public protection;

(b) Providing expert advice to the executive and legislative branches of state government;

(c) Providing active and fair enforcement of rules;

(d) Working with other federal, state, and local agencies and facilitating their involvement in planning and implementing marine safety measures;

(e) Providing information to the public; and

(f) Carrying out such other related actions as may be appropriate to this purpose.

(4) In accordance with the administrative procedure act, chapter 34.05 RCW, the ~~((office))~~ department shall ensure an opportunity for consultation, review, and comment before the adoption of standards, guidelines, and rules.

(5) Consistent with the principles set forth in subsection (2) of this section, the ~~((administrator))~~ director may create such administrative divisions, offices, bureaus, and programs within the ~~((office))~~ program as the ~~((administrator))~~ director deems necessary. The ~~((administrator))~~ director shall have complete charge of and supervisory powers over the ~~((office))~~ program, except where the ~~((administrator's))~~ director's authority is specifically limited by law.

(6) The ~~((administrator))~~ director shall appoint such personnel as are necessary to carry out the duties of the ~~((office))~~ program. In addition to exemptions set forth in RCW 41.06.070~~((28))~~, ~~the administrator, the administrator's confidential secretary, and~~, up to four professional staff members shall be exempt from the provisions of chapter 41.06 RCW. All other employees of the ~~((office))~~ program shall be subject to the provisions of chapter 41.06 RCW.

(7) The definitions in this section apply throughout this chapter.

(a) "Department" means the department of ecology.

(b) "Director" means the director of the department.

Sec. 28. RCW 43.211.030 and 1992 c 73 s 11 are each amended to read as follows:

In addition to any other powers granted the ~~((administrator))~~ director, the ~~((administrator))~~ director may:

(1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to carry out the provisions of this chapter and chapter 88.46 RCW;

(2) Appoint such advisory committees as may be necessary to carry out the provisions of this chapter and chapter 88.46 RCW. Members of such advisory committees are authorized to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. The ~~((administrator))~~ director shall review each advisory committee within the jurisdiction of the ~~((office))~~ program and each statutory advisory committee on a biennial basis to determine if such advisory committee is needed. The criteria specified in RCW 43.131.070 shall be used to determine whether or not each advisory committee shall be continued;

(3) Undertake studies, research, and analysis necessary to carry out the provisions of this chapter and chapter 88.46 RCW;

(4) Delegate powers, duties, and functions of the ~~((office))~~ program to employees of the ~~((office))~~ department as the ~~((administrator))~~ director deems necessary to carry out the provisions of this chapter and chapter 88.46 RCW;

(5) Enter into contracts on behalf of the ~~((office))~~ department to carry out the purposes of this chapter and chapter 88.46 RCW;

(6) Act for the state in the initiation of, or the participation in, any intergovernmental program for the purposes of this chapter and chapter 88.46 RCW; or

(7) Accept gifts, grants, or other funds.

Sec. 29. RCW 43.211.040 and 1991 c 200 s 407 are each amended to read as follows:

(1) The ~~((administrator))~~ director shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before the ~~((administrator))~~ director together with all books, memoranda, papers, and other documents, articles or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(2) Subpoenas issued in adjudicative proceedings shall be governed by chapter 34.05 RCW.

(3) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions shall be governed by chapter 34.05 RCW.

Sec. 30. RCW 88.40.011 and 1992 c 73 s 12 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

~~((1))~~ ~~("Administrator" means the administrator of the office of marine safety created in RCW 43.211.010.~~

~~((2))~~ "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

~~((3))~~ (2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

~~((4))~~ (3) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

~~((5))~~ (4) "Department" means the department of ecology.

~~((6))~~ (5) "Director" means the director of the department of ecology.

~~((7))~~ (6)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an

exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

~~((8))~~ (7) "Hazardous substances" means any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

- (a) Wastes listed as F001 through F028 in Table 302.4; and
- (b) Wastes listed as K001 through K136 in Table 302.4.

~~((9))~~ (8) "Inland barge" means any barge operating on the waters of the state and certified by the coast guard as an inland barge.

~~((10))~~ (9) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

~~((11))~~ "Office" means the office of marine safety established by RCW 43.211.010.

~~((12))~~ (10) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

~~((13))~~ (11) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

~~((14))~~ (12) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

~~((15))~~ (13)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

~~((16))~~ (14) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

~~((17))~~ (15) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

~~((18))~~ (16) "Spill" means an unauthorized discharge of oil into the waters of the state.

~~((19))~~ (17) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

~~((20))~~ (18) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Sec. 31. RCW 88.40.020 and 1992 c 73 s 13 are each amended to read as follows:

(1) Any inland barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall establish evidence of financial responsibility in the amount of the greater of one million dollars, or one hundred fifty dollars per gross ton of such vessel.

(2)(a) Except as provided in (c) of this subsection, a tank vessel that carries oil as cargo in bulk shall demonstrate financial responsibility to pay at least five hundred million dollars.

(b) The ~~((administrator))~~ director by rule may establish a lesser standard of financial responsibility for barges of three hundred gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the barge is capable of carrying. The ~~((administrator))~~ director shall not set the standard for barges of three hundred gross tons or less below that required under federal law.

(c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The ~~((administrator))~~ director may require the owner or operator of a tank vessel to prove membership in such an organization.

(3) A cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay the greater of at least six hundred dollars per gross ton or five hundred thousand dollars.

(4) The documentation of financial responsibility shall demonstrate the ability of the document holder to meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and necessary expenses.

(5) The ~~((office))~~ department may by rule set a lesser amount of financial responsibility for a tank vessel that meets standards for construction, propulsion, equipment, and personnel established by the ~~((office))~~ department. The ~~((office))~~ department shall require as a minimum level of financial responsibility under this subsection the same level of financial responsibility required under federal law.

(6) This section shall not apply to a covered vessel owned or operated by the federal government or by a state or local government.

Sec. 32. RCW 88.40.030 and 1991 c 200 s 705 are each amended to read as follows:

Financial responsibility required by this chapter may be established by any one of, or a combination of, the following methods acceptable to the ~~((office of marine safety or the))~~ department of ecology: (1) Evidence of insurance; (2) surety bonds; (3) qualification as a self-insurer; or (4) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. Documentation of such financial responsibility shall be kept on any covered vessel and filed with the ~~((office))~~ department at least twenty-four hours before entry of the vessel into the navigable waters of the state. A covered vessel is not required to file documentation of financial responsibility twenty-four hours before entry of the vessel into the navigable waters of the state, if the vessel has filed documentation of financial responsibility with the federal government, and the level of financial responsibility required by the federal government is the same as or exceeds state requirements. The owner or operator of the vessel may file with the ~~((office))~~ department a certificate evidencing compliance with the requirements of another state's or federal financial responsibility requirements if the state or federal government requires a level of financial responsibility the same as or greater than that required under this chapter.

Sec. 33. RCW 88.40.040 and 1992 c 73 s 14 are each amended to read as follows:

(1) The ~~((office))~~ department shall deny entry to the waters of the state to any vessel that does not meet the financial responsibility requirements of this chapter. Any vessel owner or operator that does not meet the financial responsibility requirements of this chapter and any rules prescribed thereunder or the federal oil pollution act of 1990 shall be reported by the ~~((office))~~ department to the United States coast guard.

(2) The ~~((office))~~ department shall enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act.

Sec. 34. RCW 90.56.310 and 1992 c 73 s 35 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, it shall be unlawful:
(a) For the owner or operator to operate an onshore or offshore facility without an approved contingency plan as required under RCW 90.56.210, a spill prevention plan required by RCW 90.56.200, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990; or

(b) For the owner or operator of an onshore or offshore facility to transfer cargo or passengers to or from a covered vessel that does not have an approved contingency plan or an approved prevention plan required under chapter 88.46 RCW or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2) The department may assess a civil penalty under RCW 43.21B.300 of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a facility or person is in violation of this section shall be considered a separate violation.

(3) It shall not be unlawful for a facility or other person to operate or accept cargo or passengers from a covered vessel if:

(a) A contingency plan, a prevention plan, or financial responsibility is not required for the facility; or

(b) A contingency and prevention plan has been submitted to the department as required by this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval.

(4) Any person may rely on a copy of the statement issued by the department pursuant to RCW 90.56.210(7) as evidence that the facility has an approved contingency plan and the statement issued pursuant to RCW 90.56.200(4) as evidence that the facility has an approved spill prevention plan. Any person may rely on a copy of the statement issued by the office of marine safety, or its successor agency, the department, pursuant to RCW 88.46.060 as evidence that the vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 as evidence that the vessel has an approved prevention plan.

Sec. 35. RCW 43.211.005 and 1997 c 449 s 1 are each amended to read as follows:

(1) The legislature declares that Washington's waters have irreplaceable value for the citizens of the state. These waters are vital habitat for numerous and diverse marine life and wildlife and the source of recreation, aesthetic pleasure, and pride for Washington's citizens. These waters are also vital for much of Washington's economic vitality.

The legislature finds that the transportation of oil on these waters creates a great potential hazard to these important natural resources. The legislature also finds that there is no state agency responsible for maritime safety to ensure this state's interest in preserving these resources.

~~((The legislature therefore finds that in order to protect these waters it is necessary to establish an office of marine safety which will have the responsibility to promote the safety of marine transportation in Washington.))~~

(2) The legislature finds that adequate funding is necessary for the state to continue its priority focus on the prevention of oil spills, as well as maintain a strong oil spill response, planning, and environmental restoration capability. The legislature further finds that ~~((the))~~ the long-term environmental health of the state's waters depends upon the strength and vitality of its oil spill prevention and

response program that fosters planning, coordination, and incident command. To that end, the merger of the office of marine safety with the department of ecology shall: Ensure coordination via streamlining the marine safety functions of two agencies into one; provide a focused prevention and response program under a single administration; generate efficient incident command response capability and continue to meet the challenges threatening marine safety and the environment; and increase accountability to the public, the executive branch, and the legislature.

(3) It is the intent of the legislature that the state's oil spill prevention, response, planning, and environmental restoration activities be sufficiently funded to maintain a strong prevention and response program. It is further the intent of the legislature that the merger of the office of marine safety with the department of ecology be accomplished in an organizational manner that maintains a priority focus and position for the oil spill prevention and response program. The merger shall allow for ready identification of the program by the public and ensure no diminution in the state's commitment to marine safety and environmental protection as follows:

(a) The director of the department of ecology shall consolidate all of the agency's oil spill prevention, planning, and response programs and personnel into a division or equivalent unit of organization within the department. The division shall be managed by a single administrator who is an assistant director or person of equivalent status in the department's organization. The administrator shall report directly to the director.

(b) The consolidated oil spill program unit within the department shall maintain prevention of oil spills as a specific program.

(c) The department shall identify and participate in resolving threats to safety of marine transportation and the impact of marine transportation on the environment.

NEW SECTION. Sec. 36. The following acts or parts of acts are each decodified:

- (1) RCW 43.211.005 (Findings—Consolidation of oil spill programs—Administrator of consolidated oil spill program);
- (2) RCW 88.46.150 (Tow boat standards—Study);
- (3) RCW 88.46.924 (Continuation of rules, pending business, and obligations);
- (4) RCW 88.46.925 (Prior acts valid); and
- (5) RCW 88.46.927 (Collective bargaining agreements not altered).

NEW SECTION. Sec. 37. The following acts or parts of acts are each repealed:

- (1) RCW 88.46.140 (Unified and consistent planning) and 1991 c 200 s 428;
- (2) RCW 90.56.903 (Report on implementation) and 1991 c 200 s 1109; and
- (3) RCW 88.46.922 (Transfer of property and appropriations) and 1991 c 200 s 431.

Passed the Senate March 6, 2000.
Passed the House March 1, 2000.
Approved by the Governor March 22, 2000.
Filed in Office of Secretary of State March 22, 2000.

CHAPTER 70

[Substitute Senate Bill 6213]

EMERGENCY PERSONNEL—DIRECTIVES

AN ACT Relating to guidelines for emergency medical personnel when dealing with directives; and amending RCW 43.70.480.

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

Sec. 1. RCW 43.70.480 and 1992 c 98 s 14 are each amended to read as follows:

The department of health shall adopt guidelines and protocols for how emergency medical personnel shall respond when summoned to the site of an injury or illness for the treatment of a person who has signed a written directive or durable power of attorney requesting that he or she not receive futile emergency medical treatment.

The guidelines shall include development of a simple form that shall be used state-wide.

Passed the Senate February 9, 2000.
Passed the House March 2, 2000.
Approved by the Governor March 22, 2000.
Filed in Office of Secretary of State March 22, 2000.

CHAPTER 71

[Substitute Senate Bill 6244]

JUVENILE COURT JURISDICTION—PENALTY ASSESSMENTS

AN ACT Relating to the extension of juvenile court jurisdiction to enforce a penalty assessment; amending RCW 13.40.300 and 7.68.035; adding a new section to chapter 13.40 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 13.40 RCW to read as follows:

If a respondent is ordered to pay a penalty assessment pursuant to a dispositional order entered under this chapter, he or she shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of a penalty assessment for an additional ten years.

Sec. 2. RCW 13.40.300 and 1994 sp.s. c 7 s 530 are each amended to read as follows:

(1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition; or

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday.

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older.

Sec. 3. RCW 7.68.035 and 1999 c 86 s 1 are each amended to read as follows:

(1)(a) (~~Whenever~~) When any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and two hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(b) (~~Whenever~~) When any juvenile is adjudicated of any offense in any juvenile offense disposition under Title 13 RCW, except as provided in subsection (2) of this section, there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action that includes one or more adjudications for a felony or gross misdemeanor and seventy-five dollars for each case or cause of action that includes adjudications of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504, 46.52.101, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.5249, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.090(2), and 46.09.120(2).

(3) (~~Whenever~~) When any person accused of having committed a crime posts bail in superior court pursuant to the provisions of chapter 10.19 RCW and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the crime.

(4) Such penalty assessments shall be paid by the clerk of the superior court to the county treasurer who shall monthly transmit the money as provided in RCW 10.82.070. Each county shall deposit fifty percent of the money it receives per case or cause of action under subsection (1) of this section and retains under RCW 10.82.070, not less than one and seventy-five one-hundredths percent of the remaining money it retains under RCW 10.82.070 and the money it retains under chapter 3.62 RCW, and all money it receives under subsection (7) of this section into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crime;

(c) Make a reasonable effort to inform the known victim or his surviving dependents of the existence of this chapter and the procedure for making application for benefits;

(d) Assist victims in the restitution and adjudication process; and

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it shall be submitted for review and comment to each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive

plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program, the prosecuting attorney shall retain the money deposited by the county under subsection (4) of this section until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the money deposited under subsection (4) of this section until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the county treasurer shall monthly transmit one hundred percent of the money deposited by the county under subsection (4) of this section to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Every city and town shall transmit monthly one and seventy-five one-hundredths percent of all money, other than money received for parking infractions, retained under RCW 3.46.120, 3.50.100, and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of 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 takes effect immediately.

Passed the Senate March 6, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 72

[Engrossed Substitute Senate Bill 6295]

GARNISHMENT PROCEEDINGS

AN ACT Relating to garnishment proceedings; amending RCW 6.27.005, 6.27.090, 6.27.100, 6.27.190, 6.27.250, and 6.27.320; and adding a new section to chapter 6.27 RCW.

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

Sec. 1. RCW 6.27.005 and 1998 c 227 s 1 are each amended to read as follows:

The legislature recognizes that a garnishee ((defendant)) has no responsibility for the situation leading to the garnishment of a debtor's wages, funds, or other

property, but that the garnishment process is necessary for the enforcement of obligations debtors otherwise fail to honor, and that garnishment procedures benefit the state and the business community as creditors. The state should take whatever measures that are reasonably necessary to reduce or offset the administrative burden on the garnishee ((defendant)) consistent with the goal of effectively enforcing the debtor's unpaid obligations.

Sec. 2. RCW 6.27.090 and 1988 c 231 s 24 are each amended to read as follows:

(1) The writ of garnishment shall set forth in the first paragraph the amount that garnishee is required to hold, which shall be an amount determined as follows: (a)(i) If after judgment, the amount of the judgment remaining unsatisfied on the clerk of the court's execution docket, if any, plus interest to the date of garnishment, as provided in RCW 4.56.110, plus taxable costs and attorney's fees, or (ii) if before judgment, the amount prayed for in the complaint plus estimated taxable costs of suit and attorneys' fees, together with, (b) whether before or after judgment, estimated costs of garnishment as provided in subsection (2) of this section. The court may, by order, set a higher amount to be held upon a showing of good cause by plaintiff.

(2) Costs recoverable in garnishment proceedings, to be estimated for purposes of subsection (1) of this section, include filing fee, service and affidavit fees, postage and costs of certified mail, answer fee or fees, other fees legally chargeable to a plaintiff in the garnishment process, and a garnishment attorney fee in the amount of the greater of fifty dollars or ten percent of (a) the amount of the judgment remaining unsatisfied or (b) the amount prayed for in the complaint. The garnishment attorney fee shall not exceed two hundred fifty dollars.

Sec. 3. RCW 6.27.100 and 1998 c 227 s 3 are each amended to read as follows:

The writ shall be substantially in the following form: PROVIDED, That if the writ is issued under a court order or judgment for child support, the following statement shall appear conspicuously in the caption: "This garnishment is based on a judgment or court order for child support": AND PROVIDED FURTHER, That if the garnishment is for a continuing lien, the form shall be modified as provided in RCW 6.27.340: AND PROVIDED FURTHER, That if the writ is not directed to an employer for the purpose of garnishing a defendant's earnings, the paragraph relating to the earnings exemption may be omitted and the paragraph relating to the deduction of processing fees may be omitted:

"IN THE ((SUPERIOR)) COURT
OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF

.....
Plaintiff,
vs.

No.

However, if this writ carries a statement in the heading that "This garnishment is based on a judgment or court order for child support," the basic exempt amount is forty percent of disposable earnings.

IF THIS IS A WRIT FOR A CONTINUING LIEN ON EARNINGS, YOU MAY DEDUCT A PROCESSING FEE FROM THE REMAINDER OF THE EMPLOYEE'S EARNINGS AFTER WITHHOLDING UNDER THIS WRIT. THE PROCESSING FEE MAY NOT EXCEED TWENTY DOLLARS FOR THE FIRST ANSWER AND TEN DOLLARS AT THE TIME YOU SUBMIT THE SECOND ANSWER.

If you owe the defendant a debt payable in money in excess of the amount set forth in the first paragraph of this writ, hold only the amount set forth in the first paragraph and any processing fee if one is charged and release all additional funds or property to defendant.

~~((YOUR FAILURE))~~ IF YOU FAIL TO ANSWER THIS WRIT AS COMMANDED ((WILL RESULT IN)), A JUDGMENT ((BEING)) MAY BE ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING INTEREST((S)), ATTORNEY FEES, AND COSTS WHETHER OR NOT YOU OWE ANYTHING TO THE DEFENDANT. IF YOU PROPERLY ANSWER THIS WRIT, ANY JUDGMENT AGAINST YOU WILL NOT EXCEED THE AMOUNT OF ANY NONEXEMPT DEBT OR THE VALUE OF ANY NONEXEMPT PROPERTY OR EFFECTS IN YOUR POSSESSION OR CONTROL.

JUDGMENT MAY ALSO BE ENTERED AGAINST THE DEFENDANT FOR COSTS AND FEES INCURRED BY THE PLAINTIFF.

Witness, the Honorable, Judge of the ((~~Superior~~)) above-entitled Court, and the seal thereof, this day of, ((~~19~~)) 20. . .

[Seal]

.....
Attorney for	Clerk of
Plaintiff (or	((Superior)) <u>the</u>
Plaintiff,	Court
if no attorney)	
.....
Address	By

	Address"

Sec. 4. RCW 6.27.190 and 1997 c 296 s 5 are each amended to read as follows:

The answer of the garnishee shall be signed by the garnishee or attorney or if the garnishee is a corporation, by an officer, attorney or duly authorized agent of the garnishee, under penalty of perjury, and the original delivered, either personally

or by mail, to the clerk of the court that issued the writ, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant. The answer shall be made on a form substantially as appears in this section, served on the garnishee with the writ, with minimum exemption amounts for the different pay periods filled in by the plaintiff before service of the answer forms: PROVIDED, That, if the garnishment is for a continuing lien, the answer forms shall be as prescribed in RCW 6.27.340 and 6.27.350: AND PROVIDED FURTHER, That if the writ is not directed to an employer for the purpose of garnishing the defendant's wages, paragraphs relating to the earnings exemptions may be omitted.

IN THE ((SUPERIOR)) COURT
OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF

..... NO.
Plaintiff
vs. ANSWER
..... TO WRIT OF
Defendant GARNISHMENT
.....
Garnishee Defendant

On the date the writ of garnishment was issued by the court as indicated by the date appearing on the last page of the writ, defendant (check one) . . . was . . . was not employed by garnishee; defendant (check one) . . . did . . . did not maintain a financial account with garnishee; and garnishee (check one) . . . did . . . did not have possession of or control over any funds, personal property, or effects of defendant.

At the time of service of the writ of garnishment on the garnishee there was due and owing from the garnishee to the above-named defendant \$ (On the reverse side of this answer form, or on an attached page, give an explanation of the dollar amount stated, or give reasons why there is uncertainty about your answer.)

If the above amount or any part of it is for personal earnings (that is, compensation payable for personal services, whether called wages, salary, commission, bonus, or otherwise, and including periodic payments pursuant to a pension or retirement program): Garnishee has deducted from this amount \$ which is the exemption to which the defendant is entitled, leaving \$ that garnishee holds under the writ. The exempt amount is calculated as follows:

Total compensation due defendant \$
LESS deductions for social security and
withholding taxes and any other
deduction required by law (list separately
and identify) \$
Disposable earnings \$

If the title of this writ indicates that this is a garnishment under a child support judgment, enter forty percent of disposable earnings: \$ This amount is exempt and must be paid to the defendant at the regular pay time after deducting any processing fee you may charge.

If this is not a garnishment for child support, enter seventy-five percent of disposable earnings: \$ From the listing in the following paragraph, choose the amount for the relevant pay period and enter that amount: \$ (If amounts for more than one pay period are due, multiply the preceding amount by the number of pay periods and/or fraction of pay period for which amounts are due and enter that amount: \$) The greater of the amounts entered in this paragraph is the exempt amount and must be paid to the defendant at the regular pay time after deducting any processing fee you may charge.

Minimum exempt amounts for different pay periods: Weekly \$; Biweekly \$; Semimonthly \$; Monthly \$

List all of the personal property or effects of defendant in the garnishee's possession or control when the writ was served. (Use the reverse side of this answer form or attach a schedule if necessary.)

An attorney may answer for the garnishee.

Under penalty of perjury, I affirm that I have examined this answer, including accompanying schedules, and to the best of my knowledge and belief it is true, correct, and complete.

.....
Signature of Date
Garnishee Defendant

.....
Signature of person Connection with
answering for garnishee
garnishee

.....
.....
Address of Garnishee

Sec. 5. RCW 6.27.250 and 1988 c 231 s 32 are each amended to read as follows:

(1)(a) If it appears from the answer of the garnishee or if it is otherwise made to appear that the garnishee was indebted to the defendant in any amount, not exempt, when the writ of garnishment was served, and if the required return or affidavit showing service on or mailing to the defendant is on file, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount exceeds the amount of the plaintiff's claim or judgment against the defendant with accruing interest and costs and attorney's fees as prescribed in RCW 6.27.090, in

which case it shall be for the amount of such claim or judgment, with said interest, costs, and fees. In the case of a superior court garnishment, the court shall order the garnishee to pay to the plaintiff through the registry of the court the amount of the judgment against the garnishee, the clerk of the court shall note receipt of any such payment, and the clerk of the court shall disburse the payment to the plaintiff. In the case of a district court garnishment, the court shall order the garnishee to pay the judgment amount directly to the plaintiff. In either case, the court shall inform the garnishee that failure to pay the amount may result in execution of the judgment, including garnishment.

(b) If, prior to judgment, the garnishee tenders to the plaintiff or to the court any amounts due, such tender will support judgment against the garnishee in the amount so tendered, subject to any exemption claimed within the time required in RCW 6.27.160 after the amounts are tendered, and subject to any controversion filed within the time required in RCW 6.27.210 after the amounts are tendered. Any amounts tendered to the court by or on behalf of the garnishee or the defendant prior to judgment shall be disbursed to the party entitled to same upon entry of judgment or order, and any amounts so tendered after entry of judgment or order shall be disbursed upon receipt to the party entitled to same.

(2) If it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the hearing or trial on controversion or by stipulation of the parties that the garnishee is indebted to the principal defendant in any sum, but that such indebtedness is not matured and is not due and payable, and if the required return or affidavit showing service on or mailing to the defendant is on file, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, the date when such payment is to be made to be specified in the order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found due. In case the garnishee pays the sum at the time specified in the order, the payment shall operate as a discharge, otherwise judgment shall be entered against the garnishee for the amount of such indebtedness, which judgment shall have the same force and effect, and be enforced in the same manner as other judgments entered against garnishees as provided in this chapter: PROVIDED, That if judgment is rendered in favor of the principal defendant, or if any judgment rendered against the principal defendant is satisfied prior to the date of payment specified in an order of payment entered under this subsection, the garnishee shall not be required to make the payment, nor shall any judgment in such case be entered against the garnishee.

(3) The court shall, upon request of the plaintiff at the time judgment is rendered against the garnishee or within one year thereafter, or within one year after service of the writ on the garnishee if no judgment is taken against the garnishee, render judgment against the defendant for recoverable garnishment costs and attorney fees. However, if it appears from the answer of garnishee or otherwise that, at the time the writ was issued, the garnishee held no funds,

personal property, or effects of the defendant and, in the case of a garnishment on earnings, the defendant was not employed by the garnishee, or, in the case of a writ directed to a financial institution, the defendant maintained no account therein, then the plaintiff may not be awarded judgment against the defendant for such costs or attorney fees.

NEW SECTION. Sec. 6. A new section is added to chapter 6.27 RCW to read as follows:

The judgment on garnishee's answer or tendered funds, and for costs against defendant, and the order to pay funds shall be substantially in the following form:

IN THE COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

..... NO.
Plaintiff
vs. JUDGMENT AND ORDER
TO PAY
(Clerk's Action Required)
.....
Defendant

.....
Garnishee

Judgment Summary

Judgment Creditor
Garnishment Judgment Debtor
Garnishment Judgment Amount
Costs Judgment Debtor
Costs Judgment Amount
Judgments to bear interest at %
Attorney for Judgment Creditor

IT APPEARING THAT garnishee was indebted to defendant in the nonexempt amount of \$; that at the time the writ of garnishment was issued defendant was employed by or maintained a financial institution account with garnishee, or garnishee had in its possession or control funds, personal property, or effects of defendant; and that plaintiff has incurred recoverable costs and attorney fees of \$; now, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that plaintiff is awarded judgment against garnishee in the amount of \$; that plaintiff is awarded judgment against defendant in the amount of \$ for recoverable costs; that, if this is a superior court order, garnishee shall pay its judgment amount to plaintiff

through the registry of the court, and the clerk of the court shall note receipt thereof and forthwith disburse such payment to plaintiff; that, if this is a district court order, garnishee shall pay its judgment amount to plaintiff directly or through plaintiff's attorney, and if any payment is received by the clerk of the court, the clerk shall forthwith disburse such payment to plaintiff. Garnishee is advised that the failure to pay its judgment amount may result in execution of the judgment, including garnishment.

DONE IN OPEN COURT this day of , 20. .

.....
Judge/Court Commissioner

Presented by:

.....
Attorney for Plaintiff

Sec. 7. RCW 6.27.320 and 1969 ex.s. c 264 s 31 are each amended to read as follows:

In any case where garnishee has answered that it is holding funds or property belonging to defendant and plaintiff shall obtain satisfaction of ((his)) the judgment and payment of recoverable garnishment costs and attorney fees from a source other than the garnishment, upon written demand of the defendant or the garnishee, it shall be the duty of plaintiff to obtain an order dismissing the garnishment and to serve it upon the garnishee within twenty days after the demand or the satisfaction of judgment and payment of costs and fees, whichever shall be later. In the event of the failure of plaintiff to obtain and serve such an order, if garnishee continues to hold such funds or property, defendant shall be entitled to move for dismissal of the garnishment and shall further be entitled to a judgment against plaintiff of one hundred dollars plus defendant's costs and damages. Dismissal may be on ex parte motion of the plaintiff.

Passed the Senate February 10, 2000.
Passed the House March 2, 2000.
Approved by the Governor March 22, 2000.
Filed in Office of Secretary of State March 22, 2000.

CHAPTER 73

[Substitute Senate Bill 6351]

SUPERIOR COURT COMMISSIONERS—JURISDICTION

AN ACT Relating to superior court commissioners; and amending RCW 2.24.040.

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

Sec. 1. RCW 2.24.040 and 1997 c 352 s 14 are each amended to read as follows:

Such court commissioner shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

(1) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state.

(2) To grant and enter defaults and enter judgment thereon.

(3) To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.

(4) To act as referee in all matters and actions referred to him or her by the superior court as such, with all the powers now conferred upon referees by law.

(5) To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.

(6) To hear and determine all petitions for the adoption of children and for the dissolution of incorporations.

(7) To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: PROVIDED, That in cases where a jury is demanded, same shall be referred to the superior court for trial.

(8) To hear and determine all complaints for the commitments of minors with all powers conferred upon the superior court in such matters.

(9) To hear and determine ex parte and uncontested civil matters of any nature.

(10) To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of the court commissioner's lawful orders made in any matter before the court commissioner as fully as the judge of the superior court.

(11) To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.

(12) To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he or she may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.

(13) To charge and collect, for his or her own use, the same fees for the official performance of official acts mentioned in subsections (4) and (11) of this section as are provided by law for referees and notaries public.

(14) To hear and determine small claims appeals as provided in chapter 12.36 RCW.

(15) In adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to RCW 9.94A.200; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set, amend, and review conditions

of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial.

Passed the Senate February 14, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 74

[Substitute Senate Bill 6375]

MENTAL HEALTH COMPETENCY PROCEDURES

AN ACT Relating to clarifying timelines, information sharing, and evidentiary standards in mental health competency procedures; amending RCW 10.77.060, 10.77.065, 10.77.090, 10.77.097, 71.05.235, and 71.05.390; and adding a new section to chapter 10.77 RCW.

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

Sec. I. RCW 10.77.060 and 1998 c 297 s 34 are each amended to read as follows:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant. At least one of the experts or professional persons appointed shall be a developmental disabilities professional if the court is advised by any party that the defendant may be developmentally disabled. For purposes of the examination, the court may order the defendant committed to a hospital or other suitably secure public or private mental health facility for a period of time necessary to complete the examination, but not to exceed fifteen days from the time of admission to the facility.

(b) When a defendant is ordered to be committed for inpatient examination under this subsection (1), the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court shall consider: (i) Recommendations of the expert or professional persons regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the examination authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file

his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis of the mental condition of the defendant;

(c) If the defendant suffers from a mental disease or defect, or is developmentally disabled, an opinion as to competency;

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, an opinion as to the defendant's sanity at the time of the act;

(e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant should be evaluated by a county designated mental health professional under chapter 71.05 RCW, and an opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(4) The secretary may execute such agreements as appropriate and necessary to implement this section.

Sec. 2. RCW 10.77.065 and 1998 c 297 s 35 are each amended to read as follows:

~~(1) (Whenever a defendant is evaluated under this chapter, a copy of the order requiring the evaluation shall be transmitted to the county designated mental health professional of the county in which the defendant was charged:~~

~~—(2)(a) When a defendant is evaluated under RCW 10.77.060, the professional person shall make a recommendation to the court whether the defendant should be examined by a county designated mental health professional for purposes of filing a petition under chapter 71.05 RCW whenever the court determines, and enters a finding that, the defendant is charged with: (i) A felony; or (ii) a nonfelony crime and: (A) Is charged with, or has a history of, one or more violent acts; (B) is a threat to public safety; (C) has previously been acquitted by reason of insanity; or (D) has previously been found incompetent pursuant to this chapter.~~

~~—(b)) (a)(i) The facility conducting the evaluation shall provide its report and recommendation to the court in which the criminal proceeding is pending. A copy of the report and recommendation shall be provided to the county designated mental health professional, the prosecuting attorney, the defense attorney, and the professional person at the local correctional facility where the defendant is being held, or if there is no professional person, to the person designated under (a)(ii) of this subsection.~~ Upon request, the facility shall also provide copies of any source documents relevant to the evaluation to the county designated mental health professional. The report and recommendation shall be provided not less than

twenty-four hours preceding the transfer of the defendant to the correctional facility in the county in which the criminal proceeding is pending.

~~((e))~~ (ii) If there is no professional person at the local correctional facility, the local correctional facility shall designate a professional person as defined in RCW 71.05.020 or, in cooperation with the regional support network, a professional person at the regional support network to receive the report and recommendation.

(iii) When a defendant is transferred to the facility conducting the evaluation, or upon commencement of a defendant's evaluation in the local correctional facility, the local correctional facility must notify the evaluator or the facility conducting the evaluation of the name of the professional person, or person designated under (a)(ii) of this subsection to receive the report and recommendation.

(b) If the facility concludes, under RCW 10.77.060(3)(f), the person should be kept under further control, an evaluation shall be conducted of such person under chapter 71.05 RCW. The court shall order an evaluation be conducted by the appropriate county designated mental health professional: (i) Prior to release from confinement for such person who is convicted, if sentenced to confinement for twenty-four months or less; (ii) for any person who is acquitted; or (iii) for any person: (A) Whose charges are dismissed pursuant to RCW 10.77.090(4); or (B) whose nonfelony charges are dismissed.

~~((3))~~ (2) The county designated mental health professional shall provide written notification within twenty-four hours of the results of the determination whether to commence proceedings under chapter 71.05 RCW. The notification shall be provided to the persons identified in subsection ~~((2)(b))~~ (1)(a) of this section.

~~((4))~~ (3) The prosecuting attorney shall provide a copy of the results of any proceedings commenced by the county designated mental health professional under subsection ~~((3))~~ (2) of this section to the facility conducting the evaluation under this chapter.

(4) The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services under this chapter may also be disclosed to the courts solely to prevent the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

Sec. 3. RCW 10.77.090 and 1998 c 297 s 38 are each amended to read as follows:

(1)(a) If at any time during the pendency of an action and prior to judgment the court finds, following a report as provided in RCW 10.77.060, a defendant is incompetent the court shall order the proceedings against the defendant be stayed except as provided in subsection (7) of this section.

(b) If the defendant is charged with a felony and determined to be incompetent, the court shall commit the defendant to the custody of the secretary, who shall place such defendant in an appropriate facility of the department for

evaluation and treatment, or the court may alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, but in any event, for no longer than a period of ninety days.

(c) A defendant found incompetent shall be evaluated at the direction of the secretary and a determination made whether the defendant is developmentally disabled. Such evaluation and determination shall be accomplished as soon as possible following the court's placement of the defendant in the custody of the secretary. When appropriate, and subject to available funds, if the defendant is determined to be developmentally disabled, he or she may be placed in a program specifically reserved for the treatment and training of persons with developmental disabilities where the defendant shall have the right to habilitation according to an individualized service plan specifically developed for the particular needs of the defendant. The program shall be separate from programs serving persons involved in any other treatment or habilitation program. The program shall be appropriately secure under the circumstances and shall be administered by developmental disabilities professionals who shall direct the habilitation efforts. The program shall provide an environment affording security appropriate with the charged criminal behavior and necessary to protect the public safety. The department may limit admissions of such persons to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. A copy of the report shall be sent to the facility.

(d)(i) If the defendant is:

(A) Charged with a nonfelony crime and has: (I) A history of one or more violent acts, or a pending charge of one or more violent acts; or (II) been previously acquitted by reason of insanity or been previously found incompetent under this chapter or any equivalent federal or out-of-state statute with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person; and

(B) Found by the court to be not competent; then

(C) The court shall order the secretary to place the defendant: (I) At a secure mental health facility in the custody of the department or an agency designated by the department for mental health treatment and restoration of competency. The placement shall not exceed fourteen days in addition to any unused time of the evaluation under RCW 10.77.060. The court shall compute this total period and include its computation in the order. The fourteen-day period plus any unused time of the evaluation under RCW 10.77.060 shall be considered to include only the time the defendant is actually at the facility and shall be in addition to reasonable time for transport to or from the facility; (II) on conditional release for up to ninety

days for mental health treatment and restoration of competency; or (III) any combination of (d)(i)(C)(I) and (II) of this subsection.

(ii) At the end of the mental health treatment and restoration period in (d)(i) of this subsection, or at any time a professional person determines competency has been, or is unlikely to be, restored the defendant shall be returned to court for a hearing. If, after notice and hearing, competency has been restored, the stay entered under (a) of this subsection shall be lifted. If competency has not been restored, the proceedings shall be dismissed. If the court concludes that competency has not been restored, but that further treatment within the time limits established by (d)(i) of this subsection is likely to restore competency, the court may order that treatment for purposes of competency restoration be continued. Such treatment may not extend beyond the combination of time provided for in (d)(i)(C)(I) and (II) of this subsection.

(iii)(A) If the proceedings are dismissed under (d)(ii) of this subsection and the defendant was on conditional release at the time of dismissal, the court shall order the county designated mental health professional within that county to evaluate the defendant pursuant to chapter 71.05 RCW. The evaluation may be conducted in any location chosen by the professional.

(B) If the defendant was in custody and not on conditional release at the time of dismissal, the defendant shall be detained and sent to an evaluation and treatment facility for up to seventy-two hours excluding Saturdays, Sundays, and holidays for evaluation for purposes of filing a petition under chapter 71.05 RCW. The seventy-two hour period shall commence upon the next nonholiday weekday following the court order, and shall run to the end of the last nonholiday weekday within the seventy-two hour period.

(iv) If at any time during the proceeding the court finds, following notice and hearing, a defendant is not likely to regain competency, the proceedings shall be dismissed and the defendant shall be evaluated as provided in (d)(iii) of this subsection.

(e) If the defendant is charged with a crime that is not a felony and the defendant does not meet the criteria under (d) of this subsection, the court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the county designated mental health professional to evaluate the defendant and consider initial detention proceedings under chapter 71.05 RCW. The court must give notice to all parties at least twenty-four hours before the dismissal of any proceeding under this subsection (1)(e), and provide an opportunity for a hearing on whether to dismiss the proceedings.

(2) On or before expiration of the initial ninety-day period of commitment under subsection (1)(b) of this section the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent.

(3) If the court finds by a preponderance of the evidence that a defendant charged with a felony is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety-day

period, but it must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second ninety-day period. The defendant, the defendant's attorney, or the prosecutor shall have the right to demand that the hearing be before a jury. No extension shall be ordered for a second ninety-day period, nor for any subsequent period as provided in subsection (4) of this section if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension.

(4) For persons charged with a felony, at the hearing upon the expiration of the second ninety-day period or at the end of the first ninety-day period, in the case of a developmentally disabled defendant, if the jury or court finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant: PROVIDED, That the criminal charges shall not be dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for an additional six months. At the end of the six-month period, if the defendant remains incompetent, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order release of the defendant.

(5) If the defendant is referred to the county designated mental health professional for consideration of initial detention proceedings under chapter 71.05 RCW pursuant to this chapter, the county designated mental health professional shall provide prompt written notification of the results of the determination whether to commence initial detention proceedings under chapter 71.05 RCW, and whether the person was detained. The notification shall be provided to the court in which the criminal action was pending, the prosecutor, the defense attorney in the criminal action, and the facility that evaluated the defendant for competency.

(6) The fact that the defendant is unfit to proceed does not preclude any pretrial proceedings which do not require the personal participation of the defendant.

(7) A defendant receiving medication for either physical or mental problems shall not be prohibited from standing trial, if the medication either enables the defendant to understand the proceedings against him or her and to assist in his or her own defense, or does not disable him or her from so understanding and assisting in his or her own defense.

(8) At or before the conclusion of any commitment period provided for by this section, the facility providing evaluation and treatment shall provide to the court

a written report of examination which meets the requirements of RCW 10.77.060(3).

Sec. 4. RCW 10.77.097 and 1998 c 297 s 47 are each amended to read as follows:

A copy of relevant records and reports as defined by the department, in consultation with the department of corrections, made pursuant to this chapter, and including relevant information necessary to meet the requirements of RCW 10.77.065(~~(2)~~) (1) and 10.77.090, shall accompany the defendant upon transfer to a mental health facility or a correctional institution or facility.

NEW SECTION. Sec. 5. A new section is added to chapter 10.77 RCW to read as follows:

(1) In determining whether a defendant has committed a violent act the court must:

(a) Presume that a past conviction, guilty plea, or finding of not guilty by reason of insanity establishes the elements necessary for the crime charged;

(b) Consider that the elements of a crime may not be sufficient in themselves to establish that the defendant committed a violent act; and

(c) Presume that the facts underlying the elements, if un rebutted, are sufficient to establish that the defendant committed a violent act.

(2) The presumptions in subsection (1) of this section are rebuttable.

(3) In determining the facts underlying the elements of any crime under subsection (1) of this section, the court may consider information including, but not limited to, the following material relating to the crime:

(a) Affidavits or declarations made under penalty of perjury;

(b) Criminal history record information, as defined in chapter 10.97 RCW; and

(c) Its own or certified copies of another court's records such as criminal complaints, certifications of probable cause to detain, dockets, and orders on judgment and sentencing.

Sec. 6. RCW 71.05.235 and 1999 c 11 s 1 are each amended to read as follows:

(1) If an individual is referred to a county designated mental health professional under RCW 10.77.090(1)(d)(iii)(A), the county designated mental health professional shall examine the individual within forty-eight hours. If the county designated mental health professional determines it is not appropriate to detain the individual or petition for a ninety-day less restrictive alternative under RCW 71.05.230(4), that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the county designated mental health professional not later than the next judicial day. At the hearing the superior court shall review the determination of the county designated mental health professional and determine whether an order should be entered requiring the person to be evaluated at an evaluation and treatment facility. No person referred to an evaluation and treatment facility may be held at the facility longer than seventy-two hours.

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under chapter 71.05 RCW. ~~((Immediately following completion of the evaluation))~~ Before expiration of the seventy-two hour evaluation period authorized under RCW 10.77.090(1)(d)(iii)(B), the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the superior court of the county in which the criminal charge was dismissed. The superior court shall review the recommendation not later than ~~((the next judicial day))~~ forty-eight hours, excluding Saturdays, Sundays, and holidays, after the recommendation is presented. If the court rejects the recommendation to unconditionally release the individual, the court may order the individual detained at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period and direct the individual to appear at a surety hearing before that court within seventy-two hours, or the court may release the individual but direct the individual to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the evaluation and treatment facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the individual fails to appear in court for the surety hearing, the court shall order that a mental health professional or peace officer shall take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility to be brought before the court the next judicial day after detention. Upon the individual's first appearance in court after a petition has been filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence. For an individual subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

The court shall conduct the hearing on the petition filed under this subsection within five judicial days of the date the petition is filed. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the date of the filing of the petition. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.250.

During the proceeding the person named in the petition shall continue to be detained and treated until released by order of the court. If no order has been made

within thirty days after the filing of the petition, not including any extensions of time requested by the detained person or his or her attorney, the detained person shall be released.

(3) If a county designated mental health professional or the professional person and prosecuting attorney for the county in which the criminal charge was dismissed or attorney general, as appropriate, stipulate that the individual does not present a likelihood of serious harm or is not gravely disabled, the hearing under this section is not required and the individual, if in custody, shall be released.

(4) The individual shall have the rights specified in RCW 71.05.250.

Sec. 7. RCW 71.05.390 and 1999 c 12 s 1 are each amended to read as follows:

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter 71.24 RCW; (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: **PROVIDED**, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons

or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ "

(6) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary admission, the fact and date of discharge, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(12) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(13) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(14) To the department of health of the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

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 February 11, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 75

[Engrossed Substitute Senate Bill 6487]

MENTAL HEALTH INFORMATION—DISCLOSURE TO DEPARTMENT OF CORRECTIONS

AN ACT Relating to information concerning mental health services provided to offenders; amending RCW 71.05.630, 71.05.390, and 71.34.200; reenacting and amending RCW 9.94A.110; adding a new section to chapter 71.34 RCW; adding a new section to chapter 71.05 RCW; 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. It is the intent of the legislature to enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW by authorizing access to, and release or disclosure of, necessary information related to mental health services. This includes accessing and releasing or disclosing information of persons who received mental health services as a minor. The legislature does not intend this act to readdress access to information and records regarding continuity of care.

The legislature recognizes that persons with mental illness have a right to the confidentiality of information related to mental health services, including the fact of their receiving such services, unless there is a state interest that supersedes this right. It is the intent of the legislature to balance that right of the individual with the state interest to enhance public safety.

NEW SECTION. Sec. 2. A new section is added to chapter 71.34 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.05 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community mental health programs, as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2) Information related to mental health services delivered to a person subject to chapter 9.94A RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision

of a person, or assessment of a person's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(3) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(4) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(5) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in RCW 71.34.200, except as provided in section 4 of this act.

(6) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

NEW SECTION. Sec. 3. A new section is added to chapter 71.05 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 and receives funding from public sources. This includes evaluation and

treatment facilities as defined in RCW 71.05.020, community mental health service delivery systems, or community mental health programs as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2) Information related to mental health services delivered to a person subject to chapter 9.94A RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(3) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(4) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(5) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in section 4 of this act.

(6) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.670 and 71.05.440.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 72.09 RCW to read as follows:

(1) The information received by the department under section 2 or 3 of this act may be released to the indeterminate sentence review board as relevant to carry out its responsibility of planning and ensuring community protection with respect to persons under its jurisdiction. Further disclosure by the indeterminate sentence review board is subject to the limitations set forth in subsections (3) and (4) of this section and must be consistent with the written policy of the indeterminate sentence review board. The decision to disclose or not shall not result in civil liability for the indeterminate sentence review board or its employees provided that the decision was reached in good faith and without gross negligence.

(2) The information received by the department under section 2 or 3 of this act may be used to meet the statutory duties of the department to provide evidence or report to the court. Disclosure to the public of information provided to the court by the department related to mental health services shall be limited in accordance with RCW 9.94A.110 or this section.

(3) The information received by the department under section 2 or 3 of this act may be disclosed by the department to other state and local agencies as relevant to plan for and provide offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger created by a particular offender, and in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. The information received by a state or local agency from the department shall remain confidential and subject to the limitations on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and, subject to these limitations, may be released only as relevant and necessary to counteract the danger created by a particular offender.

(4) The information received by the department under section 2 or 3 of this act may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in this subsection prevents any person from

reporting to law enforcement or the department behavior that he or she believes creates a public safety risk.

Sec. 5. RCW 71.05.630 and 1989 c 205 s 13 are each amended to read as follows:

(1) Except as otherwise provided by law, all treatment records shall remain confidential. Treatment records may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of an individual may be released without informed written consent in the following circumstances:

(a) To an individual, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the individual whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to individuals employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive an individual who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the individual from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which

has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment. ~~((Every person who is under the supervision of the department of corrections who receives evaluation or treatment under chapter 9.94A RCW shall be notified of the provisions of this section by the individual's corrections officer.))~~ Except as provided in sections 2 and 3 of this act, release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When an individual is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the individual's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only. ~~((In cases involving a person under supervision of the department of corrections, disclosure shall be made to the supervising corrections officer only.))~~

(k) To the individual's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) ~~((To a corrections officer of the department who has custody of or is responsible for the supervision of an individual who is transferred or discharged from a treatment facility.~~

~~—(m))~~ To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental illness or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information.

If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations.

Sec. 6. RCW 71.05.390 and 1999 c 12 s 1 are each amended to read as follows:

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter 71.24 RCW; (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ "

(6) To the courts as necessary to the administration of this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary admission, the fact and date of discharge, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only

such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

~~((12))~~ (13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

~~((13))~~ (14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

~~((14))~~ (15) To the department of health ~~((of))~~ for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

Sec. 7. RCW 71.34.200 and 1985 c 354 s 18 are each amended to read as follows:

The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

- (1) In communications between mental health professionals to meet the requirements of this chapter, in the provision of services to the minor, or in making appropriate referrals;
- (2) In the course of guardianship or dependency proceedings;
- (3) To persons with medical responsibility for the minor's care;

(4) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(5) When the minor or the minor's parent ((designate[s])) designates in writing the persons to whom information or records may be released;

(6) To the extent necessary to make a claim for financial aid, insurance, or medical assistance to which the minor may be entitled or for the collection of fees or costs due to providers for services rendered under this chapter;

(7) To the courts as necessary to the administration of this chapter;

(8) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address shall be disclosed upon request;

(9) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(10) To the secretary for assistance in data collection and program evaluation or research, provided that the secretary adopts rules for the conduct of such evaluation and research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ "

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence;

(12) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or

private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence;

~~((+2))~~ (13) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

~~((+3))~~ (14) Upon the death of a minor, to the minor's next of kin;

~~((+4))~~ (15) To a facility in which the minor resides or will reside.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pursuant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent.

Sec. 8. RCW 9.94A.110 and 1999 c 197 s 3 and 1999 c 196 s 4 are each reenacted and amended to read as follows:

(1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she

lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information related to mental health services, as defined in sections 2 and 3 of this act, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information related to mental health services as authorized by sections 2 through 4 of this act. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing because the department intends to disclose or discloses information related to mental health services.

Passed the Senate March 7, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 76

[Substitute Senate Bill 6382]

CRIMINAL MISTREATMENT—DEPENDENT PERSONS

AN ACT Relating to dependent persons; amending RCW 9A.42.040 and 9A.42.045; adding a new section to chapter 9A.42 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.42 RCW to read as follows:

(1) A person is guilty of the crime of criminal mistreatment in the third degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, or is a person employed to provide to the child or dependent person the basic necessities of life, and either:

(a) With criminal negligence, creates an imminent and substantial risk of substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life; or

(b) With criminal negligence, causes substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the third degree is a gross misdemeanor.

Sec. 2. RCW 9A.42.040 and 1986 c 250 s 4 are each amended to read as follows:

RCW 9A.42.020 ((and)), 9A.42.030, and section 1 of this act do not apply to ((a)) decisions to withdraw life support systems made in accordance with ((law by a health care professional and family members or others with a legal duty to care for the patient)) chapter 7.70 or 70.122 RCW by the dependent person, his or her legal surrogate, or others with a legal duty to care for the dependent person.

Sec. 3. RCW 9A.42.045 and 1997 c 392 s 512 are each amended to read as follows:

RCW 9A.42.020 ((and)), 9A.42.030, and section 1 of this act do not apply when a terminally ill or permanently unconscious person or his or her ((designee)) legal surrogate, as set forth in chapter 7.70 RCW, requests ((palliative care)), and the person receives, palliative care from a licensed home health agency, hospice agency, nursing home, or hospital ((who is)) providing care under the medical direction of a physician. As used in this section, the terms "terminally ill" and "permanently unconscious" have the same meaning as "terminal condition" and "permanent unconscious condition" in chapter 70.122 RCW.

Passed the Senate February 14, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 77

[Substitute Senate Bill 6459]

UNDESIRE MAIL—PENALTIES

AN ACT Relating to use of identifying information; adding a new section to chapter 9.35 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 9.35 RCW to read as follows:

(1) It is unlawful for any person to knowingly use a means of identification of another person to solicit undesired mail with the intent to annoy, harass, intimidate, torment, or embarrass that person.

(2) For purposes of this section, "means of identification" has the meaning provided in RCW 9.35.020.

(3) Violation of this section is a misdemeanor.

(4) Additionally, a person who violates this section is liable for civil damages of five hundred dollars or actual damages, including costs to repair the person's credit record, whichever is greater, and reasonable attorneys' fees as determined by the court.

Passed the Senate March 6, 2000.

Passed the House March 3, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 78

[Substitute Senate Bill 6740]

STATE PATROL RETIREMENT SYSTEM—SERVICE CREDIT—LEAVE OF ABSENCE

AN ACT Relating to service credit for a member of the Washington state patrol retirement system during paid leave of absence; adding a new section to chapter 43.43 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.43 RCW to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 43.43.120 through 43.43.310.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

NEW SECTION. **Sec. 2.** Section 1 of this act applies on a retroactive basis to members for whom compensation and hours were reported under the circumstances described in section 1 of this act. Section 1 of this act may also be

applied on a retroactive basis to November 23, 1987, to members for whom compensation and hours would have been reported except for explicit instructions from the department of retirement systems.

Passed the Senate February 10, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 22, 2000.

Filed in Office of Secretary of State March 22, 2000.

CHAPTER 79

[Engrossed Second Substitute Senate Bill 6067]

INDIVIDUAL HEALTH INSURANCE

AN ACT Relating to access to individual health insurance coverage; amending RCW 48.04.010, 48.18.110, 48.20.028, 48.41.020, 48.41.030, 48.41.040, 48.41.060, 48.41.080, 48.41.090, 48.41.100, 48.41.110, 48.41.120, 48.41.130, 48.41.140, 48.41.200, 48.43.015, 48.43.025, 48.43.035, 48.44.020, 48.44.022, 48.46.060, 48.46.064, 70.47.100, 70.47.010, 70.47.020, and 41.05.140; reenacting and amending RCW 48.43.005, 70.47.060, 43.84.092, 43.84.092, 43.84.092, and 43.79A.040; adding a new section to chapter 48.20 RCW; adding a new section to chapter 48.41 RCW; adding new sections to chapter 48.43 RCW; adding new sections to chapter 48.46 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.01 RCW; adding a new section to chapter 41.05 RCW; creating new sections; repealing RCW 48.41.180; providing effective dates; providing an expiration date; and declaring an emergency.

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

Sec. 1. RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each amended to read as follows:

(1) The commissioner may hold a hearing for any purpose within the scope of this code as he or she may deem necessary. The commissioner shall hold a hearing:

(a) If required by any provision of this code; or

(b) Upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing.

(2) Any such demand for a hearing shall specify in what respects such person is so aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing.

(3) Unless a person aggrieved by a written order of the commissioner demands a hearing thereon within ninety days after receiving notice of such order, or in the case of a licensee under Title 48 RCW within ninety days after the commissioner has mailed the order to the licensee at the most recent address shown in the commissioner's licensing records for the licensee, the right to such hearing shall conclusively be deemed to have been waived.

(4) If a hearing is demanded by a licensee whose license has been temporarily suspended pursuant to RCW 48.17.540, the commissioner shall hold such hearing

demanded within thirty days after receipt of the demand or within thirty days of the effective date of a temporary license suspension issued after such demand, unless postponed by mutual consent.

(5) A licensee under this title may request that a hearing authorized under this section be presided over by an administrative law judge assigned under chapter 34.12 RCW. Any such request shall not be denied.

(6) Any hearing held relating to section 3, 29, or 32 of this act shall be presided over by an administrative law judge assigned under chapter 34.12 RCW.

Sec. 2. RCW 48.18.110 and 1985 c 264 s 9 are each amended to read as follows:

(1) The commissioner shall disapprove any such form of policy, application, rider, or endorsement, or withdraw any previous approval thereof, only:

(a) If it is in any respect in violation of or does not comply with this code or any applicable order or regulation of the commissioner issued pursuant to the code; or

(b) If it does not comply with any controlling filing theretofore made and approved; or

(c) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(d) If it has any title, heading, or other indication of its provisions which is misleading; or

(e) If purchase of insurance thereunder is being solicited by deceptive advertising.

(2) In addition to the grounds for disapproval of any such form as provided in subsection (1) of this section, the commissioner may disapprove any form of disability insurance policy, except an individual health benefit plan, if the benefits provided therein are unreasonable in relation to the premium charged.

NEW SECTION. **Sec. 3.** A new section is added to chapter 48.20 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the insurer of health care services, as defined in RCW 48.43.005, provided to a policyholder or paid to or on behalf of the policyholder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for a policyholder.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) An insurer shall file, for informational purposes only, a notice of its schedule of rates for its individual health benefit plans with the commissioner prior to use.

(3) An insurer shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the insurer's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the insurer's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any insurer providing individual health benefit plans in this state shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered in the state in aggregate for the preceding calendar year. The filing shall include a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is delivered to the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the insurer.

(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the insurer, be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The insurer shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of the subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.0201.

Sec. 4. RCW 48.20.028 and 1997 c 231 s 207 are each amended 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 benefits that are required to be delivered to an individual enrolled in the basic health plan subject to RCW 48.43.025 and 48.43.035. 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;
- (iv) Tenure discounts; and
- (v) 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 RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

~~((2))~~ (2) 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))~~ (3) As used in this section, "health benefit plan," (~~("basic health plan,"~~) "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005.

Sec. 5. RCW 48.41.020 and 1987 c 431 s 2 are each amended to read as follows:

It is the purpose and intent of the legislature to provide access to health insurance coverage to all residents of Washington who are denied (~~(adequate)~~) health insurance (~~(for any reason. It is the intent of the legislature that adequate levels of health insurance coverage be made available to residents of Washington who are otherwise considered uninsurable or who are underinsured)~~). It is the intent of the Washington state health insurance coverage access act to provide a mechanism to (~~(insure)~~) ensure the availability of comprehensive health insurance to persons unable to obtain such insurance coverage on either an individual or group basis directly under any health plan.

Sec. 6. RCW 48.41.030 and 1997 c 337 s 6 are each amended to read as follows:

~~((As used in this chapter, the following terms have the meaning indicated;))~~
The definitions in this section apply throughout this chapter unless the context clearly requires otherwise(†).

(1) "Accounting year" means a twelve-month period determined by the board for purposes of record-keeping and accounting. The first accounting year may be more or less than twelve months and, from time to time in subsequent years, the board may order an accounting year of other than twelve months as may be required for orderly management and accounting of the pool.

(2) "Administrator" means the entity chosen by the board to administer the pool under RCW 48.41.080.

(3) "Board" means the board of directors of the pool.

(4) "Commissioner" means the insurance commissioner.

(5) "Covered person" means any individual resident of this state who is eligible to receive benefits from any member, or other health plan.

(6) "Health care facility" has the same meaning as in RCW 70.38.025.

(7) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.

(8) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(9) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

~~(10)~~ "Health coverage" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of health care services pursuant to Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, civilian health and medical program for the

uniform services (CHAMPUS), 10 U.S.C. 55, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of the worker's compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

~~((10))~~ (11) "Health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under this pool, have access to hospital and medical benefits or reimbursement including any group or individual disability insurance policy; health care service contract; health maintenance agreement; uninsured arrangements of group or group-type contracts including employer self-insured, cost-plus, or other benefit methodologies not involving insurance or not governed by Title 48 RCW; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. This term includes coverage through "health coverage" as defined under this section, and specifically excludes those types of programs excluded under the definition of "health coverage" in subsection ~~((9))~~ (10) of this section.

~~((11))~~ (12) "Medical assistance" means coverage under Title XIX of the federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter 74.09 RCW.

~~((12))~~ (13) "Medicare" means coverage under Title XVIII of the Social Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

~~((13))~~ (14) "Member" means any commercial insurer which provides disability insurance or stop loss insurance, any health care service contractor, and any health maintenance organization licensed under Title 48 RCW. "Member" also means the Washington state health care authority as issuer of the state uniform medical plan. "Member" shall also mean, as soon as authorized by federal law, employers and other entities, including a self-funding entity and employee welfare benefit plans that provide health plan benefits in this state on or after May 18, 1987. "Member" does not include any insurer, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health coverage" set forth in subsection ~~((9))~~ (10) of this section.

~~((14))~~ (15) "Network provider" means a health care provider who has contracted in writing with the pool administrator or a health carrier contracting with the pool administrator to offer pool coverage to accept payment from and to look solely to the pool or health carrier according to the terms of the pool health plans.

~~((15))~~ (16) "Plan of operation" means the pool, including articles, by-laws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

~~((16))~~ (17) "Point of service plan" means a benefit plan offered by the pool under which a covered person may elect to receive covered services from network providers, or nonnetwork providers at a reduced rate of benefits.

~~((17))~~ (18) "Pool" means the Washington state health insurance pool as created in RCW 48.41.040.

~~((18))~~ "Substantially equivalent health plan" means a "health plan" as defined in subsection (10) of this section which, in the judgment of the board or the administrator, offers persons including dependents or spouses covered or making application to be covered by this pool an overall level of benefits deemed approximately equivalent to the minimum benefits available under this pool.)

Sec. 7. RCW 48.41.040 and 1989 c 121 s 2 are each amended to read as follows:

(1) There is ~~((hereby))~~ created a nonprofit entity to be known as the Washington state health insurance pool. All members in this state on or after May 18, 1987, shall be members of the pool. When authorized by federal law, all self-insured employers shall also be members of the pool.

(2) Pursuant to chapter 34.05 RCW the commissioner shall, within ninety days after May 18, 1987, give notice to all members of the time and place for the initial organizational meetings of the pool. A board of directors shall be established, which shall be comprised of ~~((nine))~~ ten members. ~~((The commissioner shall select three members of the board who shall represent (a) the general public, (b) health care providers, and (c) health insurance agents.))~~ The governor shall select one member of the board from each list of three nominees submitted by state-wide organizations representing each of the following: (a) Health care providers; (b) health insurance agents; (c) small employers; and (d) large employers. The governor shall select two members of the board from a list of nominees submitted by state-wide organizations representing health care consumers. The remaining four members of the board shall be selected by election from among the members of the pool. The elected members shall, to the extent possible, include at least one representative of health care service contractors, one representative of health maintenance organizations, and one representative of commercial insurers which provides disability insurance. The members of the board shall elect a chair from the voting members of the board. The insurance commissioner shall be a nonvoting, ex officio member. When self-insured organizations other than the Washington state health care authority become eligible for participation in the pool, the membership of the board shall be increased to eleven and at least one member of the board shall represent the self-insurers.

(3) The original members of the board of directors shall be appointed for intervals of one to three years. Thereafter, all board members shall serve a term of three years. Board members shall receive no compensation, but shall be reimbursed for all travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall submit to the commissioner a plan of operation for the pool and any amendments thereto necessary or suitable to assure the fair,

reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing pursuant to chapter 34.05 RCW, approve the plan of operation if it is determined to assure the fair, reasonable, and equitable administration of the pool and provides for the sharing of pool losses on an equitable, proportionate basis among the members of the pool. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this chapter must be made available. If the board fails to submit a plan of operation within one hundred eighty days after the appointment of the board or any time thereafter fails to submit acceptable amendments to the plan, the commissioner shall, within ninety days after notice and hearing pursuant to chapters 34.05 and 48.04 RCW, adopt such rules as are necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the board and approved by the commissioner.

NEW SECTION. Sec. 8. Sixty days from the effective date of this section, the existing board of directors of the Washington state health insurance pool shall be dissolved, and the appointment or election of new members under RCW 48.41.040 shall be effective. For purposes of setting terms, the new members shall be treated as original members.

Sec. 9. RCW 48.41.060 and 1997 c 337 s 5 are each amended to read as follows:

(1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board ~~((may:~~

~~—(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;~~

~~—(2) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;~~

~~—(3)) shall:~~

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and section 21 of this act, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual's health status by assigning a discreet measure, such as a system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of

persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every eighteen months. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after the effective date of this section may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, ((agent referral fees;)) claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state ((small group)) individual plan rating requirements under RCW ((48.44.023 and 48.46.066)) 48.44.022 and 48.46.064;

((4)) (e) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year;

((5)) (f) Issue policies of health coverage in accordance with the requirements of this chapter;

((6)) (g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(i) Set a reasonable fee to be paid to an insurance agent licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in section 36 of this act.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

~~((7))~~ (d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW.

Sec. 10. RCW 48.41.080 and 1997 c 231 s 212 are each amended to read as follows:

The board shall select an administrator ~~((from the membership of the pool whether domiciled in this state or another state))~~ through a competitive bidding process to administer the pool.

(1) The board shall evaluate bids based upon criteria established by the board, which shall include:

- (a) The administrator's proven ability to handle health coverage;
- (b) The efficiency of the administrator's claim-paying procedures;
- (c) An estimate of the total charges for administering the plan; and
- (d) The administrator's ability to administer the pool in a cost-effective manner.

(2) The administrator shall serve for a period of three years subject to removal for cause. At least six months prior to the expiration of each three-year period of service by the administrator, the board shall invite all interested parties, including the current administrator, to submit bids to serve as the administrator for the succeeding three-year period. Selection of the administrator for this succeeding period shall be made at least three months prior to the end of the current three-year period.

(3) The administrator shall perform such duties as may be assigned by the board including:

- (a) ~~((AH))~~ Administering eligibility and administrative claim payment functions relating to the pool;
- (b) Establishing a premium billing procedure for collection of premiums from covered persons. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing;

(c) Performing all necessary functions to assure timely payment of benefits to covered persons under the pool including:

(i) Making available information relating to the proper manner of submitting a claim for benefits to the pool, and distributing forms upon which submission shall be made;

(ii) Taking steps necessary to offer and administer managed care benefit plans; and

(iii) Evaluating the eligibility of each claim for payment by the pool;

(d) Submission of regular reports to the board regarding the operation of the pool. The frequency, content, and form of the report shall be as determined by the board;

(e) Following the close of each accounting year, determination of net paid and earned premiums, the expense of administration, and the paid and incurred losses for the year and reporting this information to the board and the commissioner on a form as prescribed by the commissioner.

(4) The administrator shall be paid as provided in the contract between the board and the administrator for its expenses incurred in the performance of its services.

Sec. 11. RCW 48.41.090 and 1989 c 121 s 6 are each amended to read as follows:

(1) Following the close of each accounting year, the pool administrator shall determine the net premium (premiums less administrative expense allowances), the pool expenses of administration, and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(2)(a) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the member with the commissioner; and shall be determined by multiplying the total cost of pool operation by a fraction(~~;~~). The numerator of ((which)) the fraction equals that member's total number of resident insured persons, including spouse and dependents ((under the member's)), covered under all health plans in the state by that member during the preceding calendar year((and)). The denominator of ((which)) the fraction equals the total number of resident insured persons, including spouses and dependents ((insured)), covered under all health plans in the state by all pool members during the preceding calendar year.

(b) For purposes of calculating the numerator and the denominator under (a) of this subsection:

(i) All health plans in the state by the state health care authority include only the uniform medical plan; and

(ii) Each ten resident insured persons, including spouse and dependents, under a stop loss plan or the uniform medical plan shall count as one resident insured person.

(c) Except as provided in section 36 of this act, any deficit incurred by the pool shall be recouped by assessments among members apportioned under this subsection pursuant to the formula set forth by the board among members.

(3) The board may abate or defer, in whole or in part, the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. If an assessment against a member is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in subsection (2) of this section. The member receiving such abatement or deferment shall remain liable to the pool for the deficiency.

(4) If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims.

Sec. 12. RCW 48.41.100 and 1995 c 34 s 5 are each amended to read as follows:

(1) ~~((Any individual))~~ The following persons who ~~((is a))~~ are residents of this state ~~((is))~~ are eligible for pool 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))~~:

(a) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under section 21 of this act;

(b) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(c) Any person who resides in a county of the state where no carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool; and

(d) Any medicare eligible person upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on a medicare supplemental insurance policy under chapter 48.66 RCW, 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.

(2) The following persons are not eligible for coverage by the pool:

(a) 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;

(b) Any person on whose behalf the pool has paid out (~~five hundred thousand~~) one million dollars in benefits;

(c) Inmates of public institutions and persons whose benefits are duplicated under public programs;

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(d) of this section.

~~(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.))~~ When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(c) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(c) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(c) of this section within thirty days of determining that he or she is no longer eligible.

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a), (b), or (d) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(b) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

Sec. 13. RCW 48.41.110 and 1997 c 231 s 213 are each amended to read as follows:

(1) The pool (~~is authorized to~~) shall offer one or more (~~managed~~) care management plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. Covered persons enrolled in the pool on January 1, (~~1997~~) 2001, may continue coverage under the pool plan in which they are enrolled on that date. However, the pool may incorporate managed care features into such existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of the pool policy in plain language. After approval by the board (~~of directors~~), such brochure shall be made reasonably available to participants or potential participants.

(3) The health insurance policy issued by the pool shall pay only (~~usual, customary, and~~) reasonable (~~charges~~) amounts for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of illnesses, injuries, and conditions which are not otherwise limited or excluded. Eligible expenses are the (~~usual, customary, and~~) reasonable (~~charges~~) amounts for the health care services and items for which benefits are extended under the pool policy. Such benefits shall at minimum include, but not be limited to, the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, but limited to a total of one hundred eighty inpatient days in a calendar year, and limited to thirty days inpatient care for mental and nervous conditions, or alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) The first twenty outpatient professional visits for the diagnosis or treatment of one or more mental or nervous conditions or alcohol, drug, or chemical dependency or abuse rendered during a calendar year by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners, in the case of mental or nervous conditions, and rendered by a state certified chemical dependency program approved under chapter 70.96A RCW, in the case of alcohol, drug, or chemical dependency or abuse;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not more than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

(g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;

- (h) Oxygen;
- (i) Anesthesia services;
- (j) Prostheses, other than dental;
- (k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;
- (l) Diagnostic x-rays and laboratory tests;
- (m) Oral surgery limited to the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;
- (n) Maternity care services(~~(, as provided in the managed care plan to be designed by the pool board of directors, and for which no preexisting condition waiting periods may apply)~~);
- (o) Services of a physical therapist and services of a speech therapist;
- (p) Hospice services;
- (q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury; and
- (r) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

~~((3))~~ (4) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

~~((4))~~ (5) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coinsurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. The pool benefit policy cost shares and limitations must be consistent with those that are generally included in health plans approved by the insurance commissioner; however, no limitation, exception, or reduction may be used that would exclude coverage for any disease, illness, or injury.

~~((5))~~ (6) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it ~~((may))~~ shall impose a ~~((three-month))~~ six-month benefit waiting period for preexisting conditions for which medical advice was given, ~~((or))~~ or for which a prudent layperson would have sought advice or treatment, within ~~((three))~~ six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. The pool may not avoid the requirements

of this section through the creation of a new rate classification or the modification of an existing rate classification. Credit against the waiting period shall be as provided in subsection (7) of this section.

(7) The pool shall credit any preexisting condition waiting period in its plans for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new pool plan in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan. The carrier must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

Sec. 14. RCW 48.41.120 and 1989 c 121 s 8 are each amended to read as follows:

(1) Subject to the limitation provided in subsection (3) of this section, a pool policy offered in accordance with ~~((this chapter))~~ RCW 48.41.110(3) shall impose a deductible. Deductibles of five hundred dollars and one thousand dollars on a per person per calendar year basis shall initially be offered. The board may authorize deductibles in other amounts. The deductible shall be applied to the first five hundred dollars, one thousand dollars, or other authorized amount of eligible expenses incurred by the covered person.

(2) Subject to the limitations provided in subsection (3) of this section, a mandatory coinsurance requirement shall be imposed at the rate of twenty percent of eligible expenses in excess of the mandatory deductible.

(3) The maximum aggregate out of pocket payments for eligible expenses by the insured in the form of deductibles and coinsurance under a pool policy offered in accordance with RCW 48.41.110(3) shall not exceed in a calendar year:

- (a) One thousand five hundred dollars per individual, or three thousand dollars per family, per calendar year for the five hundred dollar deductible policy;
- (b) Two thousand five hundred dollars per individual, or five thousand dollars per family per calendar year for the one thousand dollar deductible policy; or
- (c) An amount authorized by the board for any other deductible policy.

(4) Eligible expenses incurred by a covered person in the last three months of a calendar year, and applied toward a deductible, shall also be applied toward the deductible amount in the next calendar year.

Sec. 15. RCW 48.41.130 and 1997 c 231 s 215 are each amended to read as follows:

All policy forms issued by the pool shall conform in substance to prototype forms developed by the pool, and shall in all other respects conform to the requirements of this chapter, and shall be filed with and approved by the commissioner before they are issued. ~~((The pool shall not issue a pool policy to any individual who, on the effective date of the coverage applied for, already has or would have coverage substantially equivalent to a pool policy as an insured or covered dependent, or who would be eligible for such coverage if he or she elected~~

~~to obtain it at a lesser premium rate. However, coverage provided by the basic health plan, as established pursuant to chapter 70.47 RCW, shall not be deemed substantially equivalent for the purposes of this section.))~~

Sec. 16. RCW 48.41.140 and 1987 c 431 s 14 are each amended to read as follows:

(1) Coverage shall provide that health insurance benefits are applicable to children of the person in whose name the policy is issued including adopted and newly born natural children. Coverage shall also include necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the policy may require that notification of the birth or adoption of a child and payment of the required premium must be furnished to the pool within thirty-one days after the date of birth or adoption in order to have the coverage continued beyond the thirty-one day period. For purposes of this subsection, a child is deemed to be adopted, and benefits are payable, when the child is physically placed for purposes of adoption under the laws of this state with the person in whose name the policy is issued; and, when the person in whose name the policy is issued assumes financial responsibility for the medical expenses of the child. For purposes of this subsection, "newly born" means, and benefits are payable, from the moment of birth.

(2) A pool policy shall provide that coverage of a dependent, unmarried person shall terminate when the person becomes nineteen years of age: PROVIDED, That coverage of such person shall not terminate at age nineteen while he or she is and continues to be both (a) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (b) chiefly dependent upon the person in whose name the policy is issued for support and maintenance, provided proof of such incapacity and dependency is furnished to the pool by the policyholder within thirty-one days of the dependent's attainment of age nineteen and subsequently as may be required by the pool but not more frequently than annually after the two-year period following the dependent's attainment of age nineteen.

~~((3) A pool policy may contain provisions under which coverage is excluded during a period of six months following the effective date of coverage as to a given covered individual for preexisting conditions, as long as medical advice or treatment was recommended or received within a period of six months before the effective date of coverage.~~

~~—These preexisting condition exclusions shall be waived to the extent to which similar exclusions have been satisfied under any prior health insurance which was for any reason other than nonpayment of premium involuntarily terminated, if the application for pool coverage is made not later than thirty days following the involuntary termination. In that case, with payment of appropriate premium, coverage in the pool shall be effective from the date on which the prior coverage was terminated.))~~

Sec. 17. RCW 48.41.200 and 1997 c 231 s 214 are each amended to read as follows:

(1) The pool shall determine the standard risk rate by calculating the average individual standard rate (for groups comprised of up to fifty persons) charged for coverage comparable to pool coverage by the five largest members, measured in terms of individual market enrollment, offering such coverages in the state (comparable to the pool coverage). In the event five members do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for such coverage in the individual market.

(2) Subject to subsection (3) of this section, maximum rates for pool coverage shall be (one hundred fifty percent for the indemnity health plan and one hundred twenty-five percent for managed care plans of the rates established as applicable for group standard risks in groups comprised of up to fifty persons) as follows:

(a) Maximum rates for a pool indemnity health plan shall be one hundred fifty percent of the rate calculated under subsection (1) of this section;

(b) Maximum rates for a pool care management plan shall be one hundred twenty-five percent of the rate calculated under subsection (1) of this section; and

(c) Maximum rates for a person eligible for pool coverage pursuant to RCW 48.41.100(1)(a) who was enrolled at any time during the sixty-three day period immediately prior to the date of application for pool coverage in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005, where such coverage was continuous for at least eighteen months, shall be:

(i) For a pool indemnity health plan, one hundred twenty-five percent of the rate calculated under subsection (1) of this section; and

(ii) For a pool care management plan, one hundred ten percent of the rate calculated under subsection (1) of this section.

(3)(a) Subject to (b) and (c) of this subsection:

(i) The rate for any person aged fifty to sixty-four whose current gross family income is less than two hundred fifty-one percent of the federal poverty level shall be reduced by thirty percent from what it would otherwise be;

(ii) The rate for any person aged fifty to sixty-four whose current gross family income is more than two hundred fifty but less than three hundred one percent of the federal poverty level shall be reduced by fifteen percent from what it would otherwise be;

(iii) The rate for any person who has been enrolled in the pool for more than thirty-six months shall be reduced by five percent from what it would otherwise be.

(b) In no event shall the rate for any person be less than one hundred ten percent of the rate calculated under subsection (1) of this section.

(c) Rate reductions under (a)(i) and (ii) of this subsection shall be available only to the extent that funds are specifically appropriated for this purpose in the omnibus appropriations act.

Sec. 18. RCW 48.43.005 and 1997 c 231 s 202 and 1997 c 55 s 1 are each reenacted and amended to read as follows:

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) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

~~(3) ("Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(d);~~

~~(4))~~ "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.

~~(5))~~ (4) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand dollars; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least five thousand five hundred dollars; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

(5) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(6) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(7) "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.

(8) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(9) "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 chapter 265, Laws of 1995.

(10) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(11) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(12) "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.

(13) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

(18) "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 services 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 services 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;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(19) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

~~(20) ("Open enrollment" means the annual sixty-two day period during the months of July and August during which every health carrier offering individual health plan coverage must accept onto individual coverage any state resident within the carrier's service area regardless of health condition who submits an application in accordance with RCW 48.43.035(1)).~~

~~((21))~~ "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

~~((22))~~ (21) "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.

~~((23))~~ (22) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

~~((24))~~ (23) "Small employer" or "small group" 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.

~~((25))~~ (24) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

~~((26))~~ (25) "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.

NEW SECTION. Sec. 19. A new section is added to chapter 48.43 RCW to read as follows:

(1) No carrier may reject an individual for an individual health benefit plan based upon preexisting conditions of the individual except as provided in section 21 of this act.

(2) No carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions except as provided in this section.

(3) For an individual health benefit plan originally issued on or after the effective date of this section preexisting condition waiting periods imposed upon a person enrolling in an individual health benefit plan shall be no more than nine months for a preexisting condition for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months prior to the effective date of the plan.

(4) Individual health benefit plan preexisting condition waiting periods shall not apply to prenatal care services.

(5) 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 who are higher than average health risks. These provisions apply only to individuals who are Washington residents.

Sec. 20. RCW 48.43.015 and 1995 c 265 s 5 are each amended to read as follows:

(1) For a health benefit plan offered to a group other than a small group, every health carrier shall ((waive)) reduce 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 and plans of the Washington state health insurance pool.

(2) For a health benefit plan offered to a small group, every health carrier shall reduce 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 nine 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 nine 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 and plans of the Washington state health insurance pool.

(3) For a health benefit plan offered to an individual, every health carrier shall credit any preexisting condition waiting period in that plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new health plan in a group health benefit plan or an individual health benefit plan, other than a catastrophic health plan, and (a) the benefits under the previous plan provide equivalent or greater overall benefit coverage than that provided in the health benefit plan the individual seeks to purchase; or (b) the person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered; or (c) The person is seeking an individual health benefit plan: (i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and (ii) his or her health care provider is part of another carrier's provider network; and (iii) application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network. The carrier must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection (3), a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.

(4) Subject to the provisions of subsections (1) through (3) 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. 21. A new section is added to chapter 48.43 RCW to read as follows:

(1) Except as provided in (a) and (b) of this subsection, a health carrier may require any person applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan; and

(b) Within fifteen business days of receipt of a completed application, the carrier shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier shall accept the person for enrollment if he or she resides 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 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.

NEW SECTION. Sec. 22. A new section is added to chapter 48.43 RCW to read as follows:

Except as otherwise required by statute or rule, a carrier and the Washington state health insurance pool, and persons acting at the direction of or on behalf of a carrier or the pool, who are in receipt of an enrollee's or applicant's personally identifiable health information included in the standard health questionnaire shall not disclose the identifiable health information unless such disclosure is explicitly authorized in writing by the person who is the subject of the information.

Sec. 23. RCW 48.43.025 and 1995 c 265 s 6 are each amended to read as follows:

(1) For group health benefit plans for groups other than small groups, 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, or for which a prudent layperson would have sought advice or treatment, within three months before the effective date of coverage. Any preexisting condition waiting period or limitation relating to pregnancy as a preexisting condition shall be imposed only to the extent allowed in the federal health insurance portability and accountability act of 1996.

(2) For group health benefit plans for small groups, 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 nine-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. Any preexisting condition waiting period or limitation relating to pregnancy as a preexisting condition shall be imposed only to the extent allowed in the federal health insurance portability and accountability act of 1996.

(3) 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.

Sec. 24. RCW 48.43.035 and 1995 c 265 s 7 are each amended to read as follows:

For group health benefit plans, the following shall apply:

(1) All health carriers shall accept for enrollment any state resident within the group to whom the plan is offered and 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. 25. A new section is added to chapter 48.43 RCW to read as follows:

(1) Except as provided in subsection (4) of this section, all individual 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.

(2) The guarantee of continuity of coverage required in individual 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 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.

(3) This section does not apply in the following cases:

- (a) A carrier has zero enrollment on a product;
- (b) A carrier is withdrawing from a service area or from a segment of its service area because the carrier has demonstrated to the commissioner that the carrier's clinical, financial, or administrative capacity to serve enrollees would be exceeded;

(c) No sooner than the first day of the month following the expiration of a one hundred eighty-day period beginning on the effective date of this section, a carrier discontinues offering a particular type of health benefit plan offered in the individual market if: (i) The carrier provides notice to each covered individual provided coverage of this type of such discontinuation at least ninety days prior to the date of the discontinuation; (ii) the carrier offers to each individual provided coverage of this type the option, without being subject to the standard health questionnaire, to enroll in any other individual health benefit plan currently being offered by the carrier; and (iii) in exercising the option to discontinue coverage of this type and in offering the option of coverage under (c)(ii) of this subsection, the carrier acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage; or

(d) A carrier discontinues offering all individual health coverage in the state and discontinues coverage under all existing individual health benefit plans if: (i) The carrier provides notice to the commissioner of its intent to discontinue offering all individual health coverage in the state and its intent to discontinue coverage under all existing health benefit plans at least one hundred eighty days prior to the date of the discontinuation of coverage under all existing health benefit plans; and (ii) the carrier provides notice to each covered individual of the intent to discontinue his or her existing health benefit plan at least one hundred eighty days prior to the date of such discontinuation. In the case of discontinuation under this subsection, the carrier may not issue any individual health coverage in this state for a five-year period beginning on the date of the discontinuation of the last health plan not so renewed. Nothing in this subsection (3) shall be construed to require a carrier to provide notice to the commissioner of its intent to discontinue offering a health benefit plan to new applicants where the carrier does not discontinue coverage of existing enrollees under that health benefit plan.

(4) The provisions of this section do not apply to health plans deemed by the 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 commissioner.

NEW SECTION. Sec. 26. A new section is added to chapter 48.43 RCW to read as follows:

(1) All individual health benefit plans, other than catastrophic health plans, offered or renewed on or after the effective date of this section, shall include benefits described in this section. Nothing in this section shall be construed to require a carrier to offer an individual health benefit plan.

(a) Maternity services that include, with no enrollee cost-sharing requirements beyond those generally applicable cost-sharing requirements: Diagnosis of pregnancy; prenatal care; delivery; care for complications of pregnancy; physician services; hospital services; operating or other special procedure rooms; radiology and laboratory services; appropriate medications; anesthesia; and services required under RCW 48.43.115; and

(b) Prescription drug benefits with at least a two thousand dollar benefit payable by the carrier annually.

(2) If a carrier offers a health benefit plan that is not a catastrophic health plan to groups, and it chooses to offer a health benefit plan to individuals, it must offer at least one health benefit plan to individuals that is not a catastrophic health plan.

NEW SECTION. Sec. 27. A new section is added to chapter 48.46 RCW to read as follows:

Notwithstanding the provisions of this chapter, a health maintenance organization may offer catastrophic health plans as defined in RCW 48.43.005.

Sec. 28. RCW 48.44.020 and 1990 c 120 s 5 are each amended to read as follows:

(1) Any health care service contractor may enter into contracts with or for the benefit of persons or groups of persons which require prepayment for health care services by or for such persons in consideration of such health care service contractor providing one or more health care services to such persons and such activity shall not be subject to the laws relating to insurance if the health care services are rendered by the health care service contractor or by a participating provider.

(2) The commissioner may on examination, subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, disapprove any individual or group contract form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(b) If it has any title, heading, or other indication of its provisions which is misleading; or

(c) If purchase of health care services thereunder is being solicited by deceptive advertising; or

(d) ~~((f, the benefits provided therein are unreasonable in relation to the amount charged for the contract;~~

~~—(e))~~ If it contains unreasonable restrictions on the treatment of patients; or

~~((f))~~ (e) If it violates any provision of this chapter; or

~~((g))~~ (f) If it fails to conform to minimum provisions or standards required by regulation made by the commissioner pursuant to chapter 34.05 RCW; or

~~((h))~~ (g) If any contract for health care services with any state agency, division, subdivision, board, or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(3) In addition to the grounds listed in subsection (2) of this section, the commissioner may disapprove any group contract if the benefits provided therein are unreasonable in relation to the amount charged for the contract.

(4)(a) Every contract between a health care service contractor and a participating provider of health care services shall be in writing and shall state that in the event the health care service contractor fails to pay for health care services as provided in the contract, the enrolled participant shall not be liable to the provider for sums owed by the health care service contractor. Every such contract shall provide that this requirement shall survive termination of the contract.

(b) No participating provider, agent, trustee, or assignee may maintain any action against an enrolled participant to collect sums owed by the health care service contractor.

NEW SECTION. Sec. 29. A new section is added to chapter 48.44 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health care service contractor of health care services, as defined in RCW 48.43.005, provided to a contract holder or paid to or on behalf of a contract holder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health care service contractor shall file, for informational purposes only, a notice of its schedule of rates for its individual contracts with the commissioner prior to use.

(3) A health care service contractor shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the health care service contractor's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health care service contractor's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any health care service contractor providing individual health benefit plans in this state shall file for review by the

commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered in this state in aggregate for the preceding calendar year. The filing shall include a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is delivered to the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health care service contractor.

(c) Any dispute regarding the calculation of the actual loss ratio shall upon written demand of either the commissioner or the health care service contractor be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The health care service contractor shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the health care service contractor's individual health benefit plans under RCW 48.14.0201.

Sec. 30. RCW 48.44.022 and 1997 c 231 s 208 are each amended 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 benefits that are required to be delivered to an individual enrolled in the basic health plan, subject~~

~~to the provisions in RCW 48.43.025 and 48.43.035. 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;
- (iv) Tenure discounts; and
- (v) 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 RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

~~((3))~~ (2) 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))~~ (3) 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 RCW 48.43.005.

Sec. 31. RCW 48.46.060 and 1989 c 10 s 10 are each amended to read as follows:

(1) Any health maintenance organization may enter into agreements with or for the benefit of persons or groups of persons, which require prepayment for health care services by or for such persons in consideration of the health maintenance organization providing health care services to such persons. Such activity is not subject to the laws relating to insurance if the health care services are rendered directly by the health maintenance organization or by any provider which has a contract or other arrangement with the health maintenance organization to render health services to enrolled participants.

(2) All forms of health maintenance agreements issued by the organization to enrolled participants or other marketing documents purporting to describe the organization's comprehensive health care services shall comply with such minimum standards as the commissioner deems reasonable and necessary in order to carry out the purposes and provisions of this chapter, and which fully inform enrolled participants of the health care services to which they are entitled, including any limitations or exclusions thereof, and such other rights, responsibilities and duties required of the contracting health maintenance organization.

(3) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove an individual or group agreement form for any of the following grounds:

- (a) If it contains or incorporates by reference any inconsistent, ambiguous, or misleading clauses, or exceptions or conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the agreement;
- (b) If it has any title, heading, or other indication which is misleading;

(c) If purchase of health care services thereunder is being solicited by deceptive advertising;

~~(d) (If the benefits provided therein are unreasonable in relation to the amount charged for the agreement;~~

~~(e))~~ If it contains unreasonable restrictions on the treatment of patients;

~~((f))~~ (e) If it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW; or

~~((g))~~ (f) If any agreement for health care services with any state agency, division, subdivision, board, or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(4) In addition to the grounds listed in subsection (2) of this section, the commissioner may disapprove any group agreement if the benefits provided therein are unreasonable in relation to the amount charged for the agreement.

(5) No health maintenance organization authorized under this chapter shall cancel or fail to renew the enrollment on any basis of an enrolled participant or refuse to transfer an enrolled participant from a group to an individual basis for reasons relating solely to age, sex, race, or health status(~~—PROVIDED HOWEVER, That~~). Nothing contained herein shall prevent cancellation of an agreement with enrolled participants (a) who violate any published policies of the organization which have been approved by the commissioner, or (b) who are entitled to become eligible for medicare benefits and fail to enroll for a medicare supplement plan offered by the health maintenance organization and approved by the commissioner, or (c) for failure of such enrolled participant to pay the approved charge, including cost-sharing, required under such contract, or (d) for a material breach of the health maintenance agreement.

~~((5))~~ (6) No agreement form or amendment to an approved agreement form shall be used unless it is first filed with the commissioner.

NEW SECTION. Sec. 32. A new section is added to chapter 48.46 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health maintenance organization of health care services, as defined in RCW 48.43.005, provided to an enrollee or paid to or on behalf of the enrollee in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health maintenance organization shall file, for informational purposes only, a notice of its schedule of rates for its individual agreements with the commissioner prior to use.

(3) A health maintenance organization shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the health maintenance organization's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health maintenance organization's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any health maintenance organization providing individual health benefit plans in this state shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered in the state in aggregate for the preceding calendar year. The filing shall include a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is delivered to the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health maintenance organization.

(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the health maintenance organization, be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The health maintenance organization shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the health maintenance organization's individual health benefit plans under RCW 48.14.0201.

Sec. 33. RCW 48.46.064 and 1997 c 231 s 209 are each amended 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 benefits that are required to be delivered to an individual enrolled in the basic health plan, subject to the provisions in RCW 48.43.025 and 48.43.035. 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, 48.46.280, 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 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;
- (iv) Tenure discounts; and
- (v) 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 RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

~~((2))~~ (2) 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.

~~((+))~~ (3) 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 RCW 48.43.005.

Sec. 34. RCW 70.47.060 and 1998 c 314 s 17 and 1998 c 148 s 1 are each reenacted and 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. In addition, the administrator may, to the extent that funds are available, 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 covered basic health care services 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 48.47.030, and such other factors as the administrator deems appropriate.

~~((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.

~~((d) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 1996, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.))~~

(3) To design and implement a structure of 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.

(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 for either subsidized enrollees, or nonsubsidized enrollees, or both. 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 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. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. 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 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 reenroll 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 may require that a business owner pay at least 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 or actuarially equivalent 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.

(16) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(17) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

Sec. 35. RCW 70.47.100 and 1987 1st ex.s. c 5 s 12 are each amended to read as follows:

(1) A managed health care ((systems)) system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

~~((Any contract between a hospital and a participating managed health care system under this chapter is subject to the requirements of RCW 70.39.140(1) regarding negotiated rates.))~~

(3) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(4) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

~~((+))~~ (a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

~~((2))~~ (b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

~~((3))~~ (c) The administrator may then select one or more systems to provide the covered services within a local area; and

~~((4))~~ (d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(5) The administrator may contract with a managed health care system to provide covered basic health care services to either subsidized enrollees, or nonsubsidized enrollees, or both.

(6) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (4) of this section, upon a determination by the administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(7)(a) The administrator shall implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140, if one of the following conditions is met:

(i) The authority determines that no managed health care system other than the authority is willing and able to provide access, as defined in the request for proposal documents, to covered basic health care services for all subsidized enrollees in an area; or

(ii) The authority determines that no other managed health care system is willing to provide access, as defined in the request for proposal documents, for one hundred thirty-three percent of the state-wide benchmark price or less, and the authority is able to offer such coverage at a price that is less than the lowest price at which any other managed health care system is willing to provide such access in an area.

(b) The authority shall initiate steps to provide the coverage described in (a) of this subsection within ninety days of making its determination that the conditions for providing a self-funded or self-insured method of providing insurance have been met.

(c) The administrator may not implement a self-funded or self-insured method of providing insurance in an area unless the administrator has received a certification from a member of the American academy of actuaries that the funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator.

NEW SECTION. Sec. 36. A new section is added to chapter 48.41 RCW to read as follows:

The Washington state health insurance pool account is created in the custody of the state treasurer. All receipts from moneys specifically appropriated to the account must be deposited in the account. Expenditures from this account shall be used to cover deficits incurred by the Washington state health insurance pool under

this chapter in excess of the threshold established in this section. To the extent funds are available in the account, funds shall be expended from the account to offset that portion of the deficit that would otherwise have to be recovered by imposing an assessment on members in excess of a threshold of seventy cents per insured person per month. The commissioner shall authorize expenditures from the account, to the extent that funds are available in the account, upon certification by the pool board that assessments will exceed the threshold level established in this section. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 37. RCW 43.84.092 and 1999 c 380 s 8, 1999 c 309 s 928, 1999 c 268 s 4, and 1999 c 94 s 2 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 drinking water assistance 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 state higher education construction account, the higher education construction account, the highway infrastructure 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 1 account, the public employees' retirement system plan 2 account, the Puyallup tribal settlement account, the resource management cost account, the site closure account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the teachers' retirement system plan 1 account, the teachers' retirement system plan 2 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal ~~((account))~~ fund, the volunteer fire fighters' ~~((relief and pension))~~ and reserve officers' administrative ~~((account))~~ fund, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington state health insurance pool 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 aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the marine operating fund, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(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.

Sec. 38. RCW 43.84.092 and 1999 c 380 s 8, 1999 c 309 s 928, 1999 c 268 s 4, 1999 c 94 s 3, and 1999 c 94 s 2 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 drinking water assistance 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 state higher education construction account, the higher education construction account, the highway infrastructure 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 1 account, the public employees' retirement system plan 2 account, the Puyallup tribal settlement account, the resource management cost account, the site closure account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the teachers' retirement system plan 1 account, the teachers' retirement system plan 2 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal ~~((account))~~ fund, the volunteer fire fighters' ~~((relief and pension))~~ and reserve officers' administrative ~~((account))~~ fund, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington state

health insurance pool 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 aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(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.

Sec. 39. RCW 43.84.092 and 1999 c 380 s 9, 1999 c 309 s 929, 1999 c 268 s 5, and 1999 c 94 s 4 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 drinking water assistance 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 state higher education construction account, the higher education construction account, the highway infrastructure 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 1 account, the public employees' retirement system plan 2 account, the Puyallup tribal settlement account, the resource management cost account, the site closure account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the tuition

recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal ((~~account~~) fund, the volunteer fire fighters' ((relief and pension)) and reserve officers' administrative ((~~account~~) fund, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool 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 aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(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. 40. A new section is added to chapter 48.01 RCW to read as follows:

(1) Except as required in RCW 48.21.045, 48.44.023, and 48.46.066, nothing in this title shall be construed to require a carrier, as defined in RCW 48.43.005, to offer any health benefit plan for sale.

(2) Nothing in this title shall prohibit a carrier as defined in RCW 48.43.005 from ceasing sale of any or all health benefit plans to new applicants if the closed plans are closed to all new applicants.

(3) This section is intended to clarify, and not modify, existing law.

NEW SECTION. Sec. 41. (1) The task force on health care reinsurance is created, and is composed of seven members, including: Three members appointed by the governor, one of whom shall be the chair of the Washington state health insurance pool; two members of the senate, one member of each party caucus appointed by the president of the senate; and two members of the house of representatives, one member of each party caucus appointed by the co-speakers of the house of representatives. The chair shall be elected by the task force from among its members.

(2) The task force shall:

(a) Monitor the provisions of this act regarding its effect on:

(i) Carrier participation in the individual market, especially in areas where coverage is currently minimal or not available;

(ii) Affordability and availability of private health plan coverage;

(iii) Washington state health insurance pool operations;

(iv) The Washington basic health plan operations;

(v) The cost of the Washington state insurance pool;

(vi) Premium affordability in the individual and small group market;

(vii) The ability of consumers to purchase, renew, and change their health insurance coverage;

(viii) The availability of coverage for medical benefits such as, but not limited to, maternity and prescription drugs in the individual market; and

(ix) The number of uninsured people in the state of Washington;

(b) After studying the feasibility of reinsurance as a method of health insurance market stability, if appropriate, develop a reinsurance system implementation plan; and

(c) Seek participation from interested parties, including but not limited to consumer, carriers, health care providers, health care purchasers, and insurance brokers and agents, in an effective manner.

(3) In the conduct of its business, the task force shall have access to all health data available by statute to health-related state agencies and may, to the extent that funds are available, purchase necessary analytical and staff support.

(4) Task force members will receive no compensation for their service.

(5) The task force shall submit an interim report to the governor and the legislature in December 2000 and December 2001, and a final report no later than December 1, 2002.

(6) The task force expires December 31, 2002.

Sec. 42. RCW 70.47.010 and 1993 c 492 s 208 are each amended to read as follows:

(1)(a) The legislature finds that limitations on access to health care services for enrollees in the state, such as in rural and underserved areas, are particularly challenging for the basic health plan. Statutory restrictions have reduced the options available to the administrator to address the access needs of basic health

plan enrollees. It is the intent of the legislature to authorize the administrator to develop alternative purchasing strategies to ensure access to basic health plan enrollees in all areas of the state, including: (i) The use of differential rating for managed health care systems based on geographic differences in costs; and (ii) limited use of self-insurance in areas where adequate access cannot be assured through other options.

(b) In developing alternative purchasing strategies to address health care access needs, the administrator shall consult with interested persons including health carriers, health care providers, and health facilities, and with other appropriate state agencies including the office of the insurance commissioner and the office of community and rural health. In pursuing such alternatives, the administrator shall continue to give priority to prepaid managed care as the preferred method of assuring access to basic health plan enrollees followed, in priority order, by preferred providers, fee for service, and self-funding.

(2) The legislature further finds that:

(a) A significant percentage of the population of this state does not have reasonably available insurance or other coverage of the costs of necessary basic health care services;

(b) This lack of basic health care coverage is detrimental to the health of the individuals lacking coverage and to the public welfare, and results in substantial expenditures for emergency and remedial health care, often at the expense of health care providers, health care facilities, and all purchasers of health care, including the state; and

(c) The use of managed health care systems has significant potential to reduce the growth of health care costs incurred by the people of this state generally, and by low-income pregnant women, and at-risk children and adolescents who need greater access to managed health care.

((2)) (3) The purpose of this chapter is to provide or make more readily available necessary basic health care services in an appropriate setting to working persons and others who lack coverage, at a cost to these persons that does not create barriers to the utilization of necessary health care services. To that end, this chapter establishes a program to be made available to those residents not eligible for medicare who share in a portion of the cost or who pay the full cost of receiving basic health care services from a managed health care system.

((3)) (4) It is not the intent of this chapter to provide health care services for those persons who are presently covered through private employer-based health plans, nor to replace employer-based health plans. However, the legislature recognizes that cost-effective and affordable health plans may not always be available to small business employers. Further, it is the intent of the legislature to expand, wherever possible, the availability of private health care coverage and to discourage the decline of employer-based coverage.

((4)) (5)(a) It is the purpose of this chapter to acknowledge the initial success of this program that has (i) assisted thousands of families in their search for

affordable health care; (ii) demonstrated that low-income, uninsured families are willing to pay for their own health care coverage to the extent of their ability to pay; and (iii) proved that local health care providers are willing to enter into a public-private partnership as a managed care system.

(b) As a consequence, the legislature intends to extend an option to enroll to certain citizens above two hundred percent of the federal poverty guidelines within the state who reside in communities where the plan is operational and who collectively or individually wish to exercise the opportunity to purchase health care coverage through the basic health plan if the purchase is done at no cost to the state. It is also the intent of the legislature to allow employers and other financial sponsors to financially assist such individuals to purchase health care through the program so long as such purchase does not result in a lower standard of coverage for employees.

(c) The legislature intends that, to the extent of available funds, the program be available throughout Washington state to subsidized and nonsubsidized enrollees. It is also the intent of the legislature to enroll subsidized enrollees first, to the maximum extent feasible.

(d) The legislature directs that the basic health plan administrator identify enrollees who are likely to be eligible for medical assistance and assist these individuals in applying for and receiving medical assistance. The administrator and the department of social and health services shall implement a seamless system to coordinate eligibility determinations and benefit coverage for enrollees of the basic health plan and medical assistance recipients.

Sec. 43. RCW 70.47.020 and 1997 c 335 s 1 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: (a) 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; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(4) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) whose gross family income at the time of enrollment does not exceed ~~((twice))~~ two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and (e) who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual, or an individual's spouse or dependent children, who meets the requirements in (a) through (c) and (e) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) who chooses to obtain basic health care coverage from a particular managed health care system; and (e) 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. 44. RCW 41.05.140 and 1994 c 153 s 10 are each amended to read as follows:

(1) Except for property and casualty insurance, the authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction ~~((except property and casualty~~

insurance)), including the basic health plan as provided in chapter 70.47 RCW. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program. The authority shall endeavor to reimburse basic health plan health care providers under this section at rates similar to the average reimbursement rates offered by the state-wide benchmark plan determined through the request for proposal process.

(2) Reserves established by the authority for employee and retiree benefit programs shall be held in a separate trust fund by the state treasurer and shall be known as the public employees' and retirees' insurance reserve fund. The state investment board shall act as the investor for the funds and, except as provided in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the public employees' and retirees' insurance reserve fund.

(3) Any savings realized as a result of a program created for employees and retirees under this section shall not be used to increase benefits unless such use is authorized by statute.

(4) Reserves established by the authority to provide insurance coverage for the basic health plan under chapter 70.47 RCW shall be held in a separate trust account in the custody of the state treasurer and shall be known as the basic health plan self-insurance reserve account. The state investment board shall act as the investor for the funds and, except as provided in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the basic health plan self-insurance reserve account.

(5) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

~~((5))~~ (6) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

~~((6))~~ (7) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

Sec. 45. RCW 43.79A.040 and 1999 c 384 s 8 and 1999 c 182 s 2 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment 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)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the basic health plan self-insurance reserve account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility grant account, the self-insurance revolving fund, the sulfur dioxide abatement account, and the children's trust fund. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) 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 advanced right of way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

NEW SECTION. Sec. 46. A new section is added to chapter 41.05 RCW to read as follows:

(1) The administrator shall design and offer a plan of health care coverage as described in subsection (2) of this section, for any person eligible under subsection (3) of this section. The health care coverage shall be designed and offered only to the extent that state funds are specifically appropriated for this purpose.

(2) The plan of health care coverage shall have the following components:

(a) Services covered more limited in scope than those contained in RCW 48.41.110(3);

(b) Enrollee cost-sharing that may include but not be limited to point-of-service cost-sharing for covered services;

(c) Deductibles of three thousand dollars on a per person per calendar year basis, and four thousand dollars on a per family per calendar year basis. The deductible shall be applied to the first three thousand dollars, or four thousand dollars, of eligible expenses incurred by the covered person or family, respectively, except that the deductible shall not be applied to clinical preventive services as recommended by the United States public health service. Enrollee out-of-pocket expenses required to be paid under the plan for cost-sharing and deductibles shall not exceed five thousand dollars per person, or six thousand dollars per family;

(d) Payment methodologies for network providers may include but are not limited to resource-based relative value fee schedules, capitation payments, diagnostic related group fee schedules, and other similar strategies including risk-sharing arrangements; and

(e) Other appropriate care management and cost-containment measures determined appropriate by the administrator, including but not limited to care coordination, provider network limitations, preadmission certification, and utilization review.

(3) Any person is eligible for coverage in the plan who resides in a county of the state where no carrier, as defined in RCW 48.43.005, or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan as defined in RCW 48.43.005 other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the administrator. Such eligibility may terminate pursuant to subsection (7) of this section.

(4) The administrator may not reject an individual for coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a nine-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. Credit against the waiting period shall be provided pursuant to subsection (5) of this section.

(5) The administrator shall credit any preexisting condition waiting period in the plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the plan in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan. The administrator must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(6) The administrator shall set the rates to be charged plan enrollees.

(7) When a carrier, as defined in RCW 48.43.005, or an insurer regulated under chapter 48.15 RCW, begins to offer an individual health benefit plan as defined in RCW 48.43.005 in a county where no carrier or insurer had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in the plan under subsection (3) of this section in that county shall no longer be eligible;

(b) The administrator shall provide written notice to any person who is no longer eligible for coverage under the plan within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options available to the person; and (iii) describe the enrollment process for the available options.

NEW SECTION. Sec. 47. RCW 48.41.180 (Offer of coverage to eligible persons) and 1987 c 431 s 18 are each repealed.

NEW SECTION. Sec. 48. 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. 49. Sections 37 and 38 of this act expire September 1, 2000.

NEW SECTION. Sec. 50. (1) Section 38 of this act takes effect July 1, 2000.

(2) Section 39 of this act takes effect September 1, 2000.

(3) Section 26 of this act takes effect on the first day of the month following the expiration of a one hundred eighty-day period beginning on the effective date of section 25 of this act.

NEW SECTION. Sec. 51. Except for sections 26, 38, and 39 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the Senate February 29, 2000.

Passed the House March 3, 2000.

Approved by the Governor March 23, 2000.

Filed in Office of Secretary of State March 23, 2000.

CHAPTER 80

[House Bill 3154]

INDIVIDUAL HEALTH INSURANCE—TECHNICAL CORRECTIONS

AN ACT Relating to technical and clarifying corrections to chapter . . . (Engrossed Second Substitute Senate Bill No. 6067), Laws of 2000; amending RCW 48.41.040, 48.41.110, 48.43.015, 48.43.—, 41.05.140, 41.05.—, and 48.21.015; and adding a new section to chapter 43.33A RCW.

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

Sec. 1. RCW 48.41.040 and 2000 c . . . (E2SSB 6067) s 7 are each amended to read as follows:

(1) There is created a nonprofit entity to be known as the Washington state health insurance pool. All members in this state on or after May 18, 1987, shall be members of the pool. When authorized by federal law, all self-insured employers shall also be members of the pool.

(2) Pursuant to chapter 34.05 RCW the commissioner shall, within ninety days after May 18, 1987, give notice to all members of the time and place for the initial organizational meetings of the pool. A board of directors shall be established, which shall be comprised of ten members. The governor shall select one member of the board from each list of three nominees submitted by state-wide organizations representing each of the following: (a) Health care providers; (b) health insurance agents; (c) small employers; and (d) large employers. The governor shall select two members of the board from a list of nominees submitted by state-wide organizations representing health care consumers. In making these selections, the governor may request additional names from the state-wide organizations representing each of the persons to be selected if the governor chooses not to select a member from the list submitted. The remaining four members of the board shall be selected by election from among the members of the pool. The elected members shall, to the extent possible, include at least one representative of health care service contractors, one representative of health maintenance organizations, and one representative of commercial insurers which provides disability insurance. The members of the board shall elect a chair from the voting members of the board. The insurance commissioner shall be a nonvoting, ex officio member. When self-insured organizations other than the Washington state health care authority become eligible for participation in the pool, the membership of the board shall be increased to eleven and at least one member of the board shall represent the self-insurers.

(3) The original members of the board of directors shall be appointed for intervals of one to three years. Thereafter, all board members shall serve a term of three years. Board members shall receive no compensation, but shall be reimbursed for all travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall submit to the commissioner a plan of operation for the pool and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing pursuant to chapter 34.05 RCW, approve the plan of operation if it is determined to assure the fair, reasonable, and equitable administration of the pool and provides for the sharing of pool losses on an equitable, proportionate basis among the members of the pool. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this chapter must be made available. If the board fails to submit a plan of operation within one hundred eighty days after the appointment

of the board or any time thereafter fails to submit acceptable amendments to the plan, the commissioner shall, within ninety days after notice and hearing pursuant to chapters 34.05 and 48.04 RCW, adopt such rules as are necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the board and approved by the commissioner.

Sec. 2. RCW 48.41.110 and 2000 c . . . (E2SSB 6067) s 13 are each amended to read as follows:

(1) The pool shall offer one or more care management plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. Covered persons enrolled in the pool on January 1, 2001, may continue coverage under the pool plan in which they are enrolled on that date. However, the pool may incorporate managed care features into such existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of the pool policy in plain language. After approval by the board, such brochure shall be made reasonably available to participants or potential participants.

(3) The health insurance policy issued by the pool shall pay only reasonable amounts for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of illnesses, injuries, and conditions which are not otherwise limited or excluded. Eligible expenses are the reasonable amounts for the health care services and items for which benefits are extended under the pool policy. Such benefits shall at minimum include, but not be limited to, the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, but limited to a total of one hundred eighty inpatient days in a calendar year, and limited to thirty days inpatient care for mental and nervous conditions, or alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) The first twenty outpatient professional visits for the diagnosis or treatment of one or more mental or nervous conditions or alcohol, drug, or chemical dependency or abuse rendered during a calendar year by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners, in the case of mental or nervous conditions, and rendered by a state certified chemical

dependency program approved under chapter 70.96A RCW, in the case of alcohol, drug, or chemical dependency or abuse;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not more than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

(g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;

(h) Oxygen;

(i) Anesthesia services;

(j) Prostheses, other than dental;

(k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;

(l) Diagnostic x-rays and laboratory tests;

(m) Oral surgery limited to the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;

(n) Maternity care services;

(o) Services of a physical therapist and services of a speech therapist;

(p) Hospice services;

(q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury; and

(r) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(4) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

(5) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coinsurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. The pool benefit policy cost shares and limitations must be consistent with those that are generally included in health plans approved by the insurance commissioner; however, no limitation, exception, or reduction may be used that would exclude coverage for any disease, illness, or injury.

(6) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall

impose a six-month benefit waiting period for preexisting conditions for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. The pool may not avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. Credit against the waiting period shall be as provided in subsection (7) of this section.

(7)(a) Except as provided in (b) of this subsection, the pool shall credit any preexisting condition waiting period in its plans for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new pool plan in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan. The ((carrier)) pool must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(b) The pool shall waive any preexisting condition waiting period for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

Sec. 3. RCW 48.43.015 and 2000 c . . . (E2SSB 6067) s 20 are each amended to read as follows:

(1) For a health benefit plan offered to a group other than a small group, every health carrier shall reduce 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 and plans of the Washington state health insurance pool.

(2) For a health benefit plan offered to a small group, every health carrier shall reduce 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 nine 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 nine 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 and plans of the Washington state health insurance pool.

(3) For a health benefit plan offered to an individual, other than an individual to whom subsection (4) of this section applies, every health carrier shall credit any preexisting condition waiting period in that plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new health plan in a group health benefit plan or an individual health benefit plan, other than a catastrophic health plan, and (a) the benefits under the previous plan provide equivalent or greater overall benefit coverage than that provided in the health benefit plan the individual seeks to purchase; or (b) the person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, if application for coverage is made within ninety days of relocation; or (c) the person is seeking an individual health benefit plan: (i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and (ii) his or her health care provider is part of another carrier's provider network; and (iii) application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network. The carrier must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection (3), a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.

(4) Every health carrier shall waive any preexisting condition waiting period in its individual plans for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(5) Subject to the provisions of subsections (1) through ~~((3))~~ (4) 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.

Sec. 4. RCW 48.43.— and 2000 c . . . (E2SSB 6067) s 21 are each amended to read as follows:

(1) Except as provided in (a) ~~((and (b)))~~ through (c) of this subsection, a health carrier may require any person applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(c) If a person is seeking an individual health benefit plan due to his or her having exhausted continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of exhaustion of continuation coverage.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan; and

(b) Within fifteen business days of receipt of a completed application, the carrier shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier shall accept the person for enrollment if he or she resides 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 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.

Sec. 5. RCW 41.05.140 and 2000 c . . . (E2SSB 6067) s 44 are each amended to read as follows:

(1) Except for property and casualty insurance, the authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction, including the basic health plan as provided in chapter 70.47 RCW. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program. The authority shall endeavor to reimburse basic health plan health care providers under this section at rates similar to the average reimbursement rates offered by the state-wide benchmark plan determined through the request for proposal process.

(2) Reserves established by the authority for employee and retiree benefit programs shall be held in a separate trust fund by the state treasurer and shall be known as the public employees' and retirees' insurance reserve fund. The state investment board shall act as the investor for the funds and, except as provided in RCW 43.33A.160 and 43.84.160, one hundred percent of all earnings from these investments shall accrue directly to the public employees' and retirees' insurance reserve fund.

(3) Any savings realized as a result of a program created for employees and retirees under this section shall not be used to increase benefits unless such use is authorized by statute.

(4) Reserves established by the authority to provide insurance coverage for the basic health plan under chapter 70.47 RCW shall be held in a separate trust account in the custody of the state treasurer and shall be known as the basic health plan self-insurance reserve account. The state investment board shall act as the investor for the funds (~~and, except as provided in RCW 43.33A.160~~) as set forth in section 6 of this act and, except as provided in RCW 43.33A.160 and 43.84.160, one hundred percent of all earnings from these investments shall accrue directly to the basic health plan self-insurance reserve account.

(5) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

(6) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

(7) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.33A RCW to read as follows:

(1) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the basic health plan self-insurance reserve account. All investment and operating costs associated with the investment of money shall be paid under RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the account.

(2) All investments made by the state investment board shall be made with the exercise of that degree of judgment and care under RCW 43.33A.140 and the investment policy established by the state investment board.

(3) As deemed appropriate by the investment board, money in the account may be commingled for investment with other funds subject to investment by the board.

(4) The investment board shall routinely consult and communicate with the health care authority on the investment policy, earnings of the account, and related needs of the account.

Sec. 7. RCW 41.05.— and 2000 c . . . (E2SSB 6067) s 46 are each amended to read as follows:

(1) The administrator shall design and offer a plan of health care coverage as described in subsection (2) of this section, for any person eligible under subsection (3) of this section. The health care coverage shall be designed and offered only to the extent that state funds are specifically appropriated for this purpose.

(2) The plan of health care coverage shall have the following components:

(a) Services covered more limited in scope than those contained in RCW 48.41.110(3);

(b) Enrollee cost-sharing that may include but not be limited to point-of-service cost-sharing for covered services;

(c) Deductibles of three thousand dollars on a per person per calendar year basis, and four thousand dollars on a per family per calendar year basis. The deductible shall be applied to the first three thousand dollars, or four thousand dollars, of eligible expenses incurred by the covered person or family, respectively, except that the deductible shall not be applied to clinical preventive services as recommended by the United States public health service. Enrollee out-of-pocket

expenses required to be paid under the plan for cost-sharing and deductibles shall not exceed five thousand dollars per person, or six thousand dollars per family;

(d) Payment methodologies for network providers may include but are not limited to resource-based relative value fee schedules, capitation payments, diagnostic related group fee schedules, and other similar strategies including risk-sharing arrangements; and

(e) Other appropriate care management and cost-containment measures determined appropriate by the administrator, including but not limited to care coordination, provider network limitations, preadmission certification, and utilization review.

(3) Any person is eligible for coverage in the plan who resides in a county of the state where no carrier, as defined in RCW 48.43.005, or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan as defined in RCW 48.43.005 other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the administrator. Such eligibility may terminate pursuant to subsection ~~((7))~~ (8) of this section.

(4) The administrator may not reject an individual for coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a nine-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. Credit against the waiting period shall be provided pursuant to subsections (5) and (6) of this section.

(5) Except for persons to whom subsection (6) of this section applies, the administrator shall credit any preexisting condition waiting period in the plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the plan in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan. The administrator must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(6) The administrator shall waive any preexisting condition waiting period in the plan for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(7) The administrator shall set the rates to be charged plan enrollees.

~~((7))~~ (8) When a carrier, as defined in RCW 48.43.005, or an insurer regulated under chapter 48.15 RCW, begins to offer an individual health benefit

plan as defined in RCW 48.43.005 in a county where no carrier or insurer had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in the plan under subsection (3) of this section in that county shall no longer be eligible;

(b) The administrator shall provide written notice to any person who is no longer eligible for coverage under the plan within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options available to the person; and (iii) describe the enrollment process for the available options.

Sec. 8. RCW 48.21.015 and 1992 c 226 s 3 are each amended to read as follows:

Group stop loss insurance is exempt from all sections of this chapter(;) and chapter 48.32A RCW(~~(; and chapter 48.41 RCW)~~) except for RCW 48.21.010 and this section. For ~~((the))~~ the purpose of this exemption, group stop loss is further defined as follows:

(1) The policy must be issued to and insure the employer, the trustee or other sponsor of the plan, or the plan itself, but not the employees, members, or participants;

(2) Payment by the insurer must be made to the employer, the trustee, or other sponsor of the plan or the plan itself, but not to the employees, members, participants, or health care providers;

(3) The policy must contain a provision that establishes an aggregate attaching point or retention that is at the minimum one hundred twenty percent of the expected claims; and

(4) The policy may provide for an individual attaching point or retention that is not less than five percent of the expected claims or one hundred thousand dollars, whichever is less.

Passed the House March 4, 2000.

Passed the Senate March 6, 2000.

Approved by the Governor March 23, 2000.

Filed in Office of Secretary of State March 23, 2000.

CHAPTER 81

[Substitute Senate Bill 6675]

TELECOMMUNICATIONS—PUBLIC UTILITY DISTRICTS—RURAL PORT DISTRICTS

AN ACT Relating to the provision of telecommunications services by public utility districts and rural port districts; adding new sections to chapter 54.16 RCW; adding new sections to chapter 53.08 RCW; adding a new section to chapter 80.01 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** The legislature makes the following findings:

(1) Access to telecommunications facilities and services is essential to the economic well-being of both rural and urban areas.

(2) Many persons and entities, particularly in rural areas, do not have adequate access to telecommunications facilities and services.

(3) Public utility districts and rural port districts may be well-positioned to construct and operate telecommunications facilities.

NEW SECTION. Sec. 2. A new section is added to chapter 54.16 RCW to read as follows:

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

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Telecommunications" has the same meaning as that contained in RCW 80.04.010.

(3) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

(4) "Wholesale telecommunications services" means the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers.

NEW SECTION. Sec. 3. A new section is added to chapter 54.16 RCW to read as follows:

(1) A public utility district in existence on the effective date of this act may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(a) For the district's internal telecommunications needs; and

(b) For the provision of wholesale telecommunications services within the district and by contract with another public utility district.

Nothing in this subsection shall be construed to authorize public utility districts to provide telecommunications services to end users.

(2) A public utility district providing wholesale telecommunications services shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) When a public utility district establishes a separate utility function for the provision of wholesale telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale telecommunications services must be dedicated to the utility function that includes the provision of wholesale telecommunications services for costs incurred to build and maintain the telecommunications facilities until such time as any bonds or other financing instruments executed after the effective date of this act and used to finance the telecommunications facilities are discharged or retired.

(4) When a public utility district establishes a separate utility function for the provision of wholesale telecommunications services, all telecommunications services rendered by the separate function to the district for the district's internal telecommunications needs shall be charged at its true and full value. A public utility district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A public utility district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a public utility district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in this act limits any existing authority of a public utility district under this title.

****NEW SECTION. Sec. 4. A new section is added to chapter 54.16 RCW to read as follows:***

(1) Prior to financing or constructing telecommunications facilities for the provision of wholesale telecommunications services, a public utility district shall:

(a) Develop a written implementation plan stating the district's intent to provide wholesale telecommunications services which must include:

(i) A general description of how the district intends to engage in the provision of wholesale telecommunications services under section 3 of this act; and

(ii) A discussion of how the public interest shall be served by the provision of wholesale telecommunications services; and

(b) Present the implementation plan to the district's commission, and make the plan available to the general public. The commission shall conduct at least three public hearings throughout the district to take public comment on the implementation plan. At least two weeks prior to each public hearing, a notice that includes a general description of the implementation plan and the date and place of hearing shall be published in a newspaper of general circulation in the county in which the district is located.

(2) After the public hearings, the commission may adopt, alter, or reject the implementation plan by resolution. Within ninety days after the adoption of such resolution, a petition signed by at least ten percent of the registered voters in the district may be submitted to the commission requiring the subject of the resolution be put to a vote of the people in the district.

(3) If a petition meets the requirements of subsection (2) of this section, the commission shall submit the resolution to the legislative authority of the county in which the district is located. Upon receipt of the resolution, the legislative authority shall submit a proposal to the voters of the district at the next general election regarding the question of providing wholesale telecommunications services in the district in substantially the following terms:

Shall Public Utility District No. . . . of County be authorized to provide wholesale telecommunications services within the boundaries of the district?

Yes . . .

No . . .

Within ten days after such an election, the election board of the county shall canvass the returns, and if at such an election a majority of voters voting on the proposition shall vote in favor of such authority, the district shall have the authority to provide wholesale telecommunications services.

(4) A public utility district providing wholesale telecommunications services shall submit a report to the appropriate committees of the legislature by December 1st of the second year of each biennium. The report must include, at a minimum, a description of the following activities:

(a) All activities relating to the construction, acquisition, operation, marketing, and leasing of telecommunications facilities and wholesale telecommunications services; and

(b) The number of new locations connected to the telecommunications facilities resulting from the provision of wholesale telecommunications services to enhanced service providers and entities authorized to provide telecommunications services to the general public.

**Sec. 4 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 5. A new section is added to chapter 54.16 RCW to read as follows:

(1) A person or entity that has requested wholesale telecommunications services from a public utility district providing wholesale telecommunications services under this chapter may petition the commission under the procedures set forth in RCW 80.04.110 (1) through (3) if it believes the district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential. The person or entity shall provide the public utility district notice of its intent to petition the commission and an opportunity to review within thirty days the rates, terms, and conditions as applied to it prior to submitting its petition. In determining whether a district is providing discriminatory or preferential rates, terms, and conditions,

the commission may consider such matters as service quality, cost of service, technical feasibility of connection points on the district's facilities, time of response to service requests, system capacity, and other matters reasonably related to the provision of wholesale telecommunications services. If the commission, after notice and hearing, determines that a public utility district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance. An order imposed under this section shall be enforceable in any court of competent jurisdiction.

(2) The commission may order a public utility district to pay a share of the costs incurred by the commission in connection with adjudicating or enforcing the provisions of this section.

(3) Without limiting other remedies at law or equity, the commission and prevailing party may also seek injunctive relief to compel compliance with an order.

(4) Nothing in this section shall be construed to affect the commission's authority and jurisdiction with respect to actions, proceedings, or orders permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56).

NEW SECTION. Sec. 6. A new section is added to chapter 53.08 RCW to read as follows:

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

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Rural port district" means a port district formed under chapter 53.04 RCW and located in a county with an average population density of fewer than one hundred persons per square mile.

(3) "Telecommunications" has the same meaning as contained in RCW 80.04.010.

(4) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

(5) "Wholesale telecommunications services" means the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers.

NEW SECTION. Sec. 7. A new section is added to chapter 53.08 RCW to read as follows:

(1) A rural port district in existence on the effective date of this act may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add

to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(a) For the district's own use; and

(b) For the provision of wholesale telecommunications services within the district's limits. Nothing in this subsection shall be construed to authorize rural port districts to provide telecommunications services to end users.

(2) A rural port district providing wholesale telecommunications services under this section shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a rural port district offering such rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) When a rural port district establishes a separate utility function for the provision of wholesale telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale telecommunications services must be dedicated to the utility function that includes the provision of wholesale telecommunications services for costs incurred to build and maintain the telecommunications facilities until such time as any bonds or other financing instruments executed after the effective date of this act and used to finance the telecommunications facilities are discharged or retired.

(4) When a rural port district establishes a separate utility function for the provision of wholesale telecommunications services, all telecommunications services rendered by the separate function to the district for the district's internal telecommunications needs shall be charged at its true and full value. A rural port district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A rural port district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a rural port district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in this act limits any existing authority of a rural port district under this title.

****NEW SECTION. Sec. 8. A new section is added to chapter 53.08 RCW to read as follows:***

(1) Prior to financing or constructing telecommunications facilities for the provision of wholesale telecommunications services, a rural port district shall:

(a) Develop a written implementation plan stating the district's intent to provide wholesale telecommunications services which must include:

(i) A general description of how the district intends to engage in the provision of wholesale telecommunications services under section 7 of this act; and

(ii) A discussion of how the public interest shall be served by the provision of wholesale telecommunications services; and

(b) Present the implementation plan to the district's commission, and make the plan available to the general public. The commission shall conduct at least three public hearings throughout the district to take public comment on the implementation plan. At least two weeks prior to each public hearing, a notice that includes a general description of the implementation plan and the date and place of hearing shall be published in a newspaper of general circulation in the county in which the district is located.

(2) After the public hearings, the commission may adopt, alter, or reject the implementation plan by resolution. Within ninety days after adoption of such resolution, a petition signed by at least ten percent of the registered voters in the district may be submitted to the commission requiring the subject of the resolution be put to a vote of the people in the district.

(3) If a petition meets the requirements of subsection (2) of this section, the commission shall submit the resolution to the legislative authority of the county in which the district is located. Upon receipt of the resolution, the legislative authority shall submit a proposal to the voters of the district at the next general election regarding the question of providing wholesale telecommunications services in the district in substantially the following terms:

Shall Port District No. of County be authorized to provide wholesale telecommunications services within the boundaries of the district?

Yes . . .

No . . .

Within ten days after such an election, the election board of the county shall canvass the returns, and if at such an election a majority of voters voting on the proposition shall vote in favor of such authority, the district shall have the authority to provide wholesale telecommunications services.

(4) A rural port district providing wholesale telecommunications services shall submit a report to the appropriate committees of the legislature by December 1st of the second year of each biennium. The report must include, at a minimum, a description of the following activities:

(a) All activities relating to the construction, acquisition, operation, marketing, and leasing of telecommunications facilities and wholesale telecommunications services; and

(b) The number of new locations connected to the telecommunications facilities resulting from the provision of wholesale telecommunications services

to enhanced service providers and entities authorized to provide telecommunications services to the general public.

*Sec. 8 was vetoed. See message at end of chapter.

NEW SECTION. **Sec. 9.** A new section is added to chapter 53.08 RCW to read as follows:

(1) A person or entity that has requested wholesale telecommunications services from a rural port district may petition the commission under the procedures set forth in RCW 80.04.110 (1) through (3) if it believes the district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential. The person or entity shall provide the district notice of its intent to petition the commission and an opportunity to review within thirty days the rates, terms, and conditions as applied to it prior to submitting its petition. In determining whether a district is providing discriminatory or preferential rates, terms, and conditions, the commission may consider such matters as service quality, technical feasibility of connection points on the district's telecommunications facilities, time of response to service requests, system capacity, and other matters reasonably related to the provision of wholesale telecommunications services. If the commission, after notice and hearing, determines that a rural port district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance. An order imposed under this section shall be enforceable in any court of competent jurisdiction.

(2) The commission may order a rural port district to pay a share of the costs incurred by the commission in adjudicating or enforcing this section.

(3) Without limiting other remedies at law or equity, the commission and prevailing party may also seek injunctive relief to compel compliance with an order.

(4) Nothing in this section shall be construed to affect the commission's authority and jurisdiction with respect to actions, proceedings, or orders permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56).

NEW SECTION. **Sec. 10.** A new section is added to chapter 80.01 RCW to read as follows:

The commission is authorized to perform the duties required by sections 5 and 9 of this act.

Passed the Senate March 8, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 24, 2000, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2000.

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

"I am returning herewith, without my approval as to sections 4 and 8, Substitute Senate Bill No. 6675 entitled:

"AN ACT Relating to the provision of telecommunications services by public utility districts and rural port districts;"

This bill gives public utility districts and rural port districts express authority to be wholesalers of telecommunications services within their districts. I support this legislation as a key step in promoting advanced telecommunications facilities and services in underserved areas of Washington.

Sections 4 and 8 of the bill would impose overly restrictive requirements on public utility and rural port districts before financing or constructing telecommunications facilities, and would not significantly improve accountability. I strongly support the goal of ensuring accountability to the public. However, I believe that some of the requirements of sections 4 and 8 could impair districts' current activities and significantly complicate or delay the facilities and services that our rural areas so urgently need.

I fully expect that public utility and port districts will respond appropriately to requests for information from the Legislature regardless of any statutory requirement to do so.

For these reasons, I have vetoed sections 4 and 8 of Substitute Senate Bill No. 6675. With the exception of sections 4 and 8, Substitute Senate Bill No. 6675 is approved."

CHAPTER 82

[Engrossed House Bill 288]

TELECOMMUNICATIONS--ALTERNATIVE FORMS OF REGULATION

AN ACT Relating to new procedures for alternative forms of regulation of telecommunications companies; and amending RCW 80.36.135.

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

Sec. 1. RCW 80.36.135 and 1995 c 110 s 5 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))~~
Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes;

- (b) Improve the efficiency of the regulatory process;
- (c) Preserve or enhance the development of effective competition and protect against the exercise of market power during its development;
- (d) Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services;
- (e) Provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential; and
- (f) Not unduly or unreasonably prejudice or disadvantage any particular customer class.

(3) A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to establish an alternative form of regulation. The company or companies shall submit with the petition a plan for an alternative form of regulation. The plan shall contain a proposal for transition to the alternative form of regulation(~~(—The commission shall review and may modify or reject the proposed))~~ and the proposed duration of the plan. The plan must also contain a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event the company fails to meet service quality standards or performance measures. 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:)), after notice and hearing, shall issue an order accepting, modifying, or rejecting the plan within nine months after the petition or motion is filed, unless extended by the commission for good cause. The commission shall order implementation of the alternative plan of regulation unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated in subsection (2) of this section.~~

(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 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 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)). However, the commission may not waive any grant of legal rights to any person contained in this chapter and chapter 80.04 RCW. 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 company, and after notice and hearing, the commission may rescind ~~((its approval of))~~ or modify 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 chapter 101, Laws of 1989; PROVIDED, That the complainant shall bear the burden of proving the allegations in the complaint)) in the manner requested by the company.~~

(7) The commission or any person may file a complaint under RCW 80.04.110 alleging that a telecommunications company under an alternative form of regulation has not complied with the terms and conditions set forth in the alternative form of regulation. The complainant shall bear the burden of proving the allegations in the complaint.

Passed the House February 14, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 83

[Engrossed Substitute Senate Bill 6676]

RIGHTS OF WAY—USE BY TELECOMMUNICATIONS SERVICES

AN ACT Relating to the use of city or town rights of way by telecommunications and cable television providers; amending RCW 35.21.860; adding a new section to chapter 35A.21 RCW; and adding a new chapter to Title 35 RCW.

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

NEW SECTION. **Sec. I.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cable television service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

(2) "Facilities" means all of the plant, equipment, fixtures, appurtenances, antennas, and other facilities necessary to furnish and deliver telecommunications services and cable television services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services.

(3) "Master permit" means the agreement in whatever form whereby a city or town may grant general permission to a service provider to enter, use, and occupy the right of way for the purpose of locating facilities. This definition is not intended to limit, alter, or change the extent of the existing authority of a city or town to require a franchise nor does it change the status of a service provider asserting an existing state-wide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington state Constitution to occupy the right of way. For the purposes of this subsection, a

franchise, except for a cable television franchise, is a master permit. A master permit does not include cable television franchises.

(4) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(5) "Right of way" means land acquired or dedicated for public roads and streets, but does not include:

(a) State highways;

(b) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;

(c) Structures, including poles and conduits, located within the right of way;

(d) Federally granted trust lands or forest board trust lands;

(e) Lands owned or managed by the state parks and recreation commission;

or

(f) Federally granted railroad rights of way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

(6) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, person, city, or town owning, operating, or managing any facilities used to provide and providing telecommunications or cable television service for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city, or town.

(7) "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

(8) "Use permit" means the authorization in whatever form whereby a city or town may grant permission to a service provider to enter and use the specified right of way for the purpose of installing, maintaining, repairing, or removing identified facilities.

NEW SECTION. Sec. 2. A city or town may grant, issue, or deny permits for the use of the right of way by a service provider for installing, maintaining, repairing, or removing facilities for telecommunications services or cable television services pursuant to ordinances, consistent with this act.

NEW SECTION. Sec. 3. (1) Cities and towns may require a service provider to obtain a master permit. A city or town may request, but not require, that a service provider with an existing state-wide grant to occupy the right of way obtain a master permit for wireline facilities.

(a) The procedures for the approval of a master permit and the requirements for a complete application for a master permit shall be available in written form.

(b) Where a city or town requires a master permit, the city or town shall act upon a complete application within one hundred twenty days from the date a service provider files the complete application for the master permit to use the right of way, except:

(i) With the agreement of the applicant; or

(ii) Where the master permit requires action of the legislative body of the city or town and such action cannot reasonably be obtained within the one hundred twenty day period.

(2) A city or town may require that a service provider obtain a use permit. A city or town must act on a request for a use permit by a service provider within thirty days of receipt of a completed application, unless a service provider consents to a different time period or the service provider has not obtained a master permit requested by the city or town.

(a) For the purpose of this section, "act" means that the city makes the decision to grant, condition, or deny the use permit, which may be subject to administrative appeal, or notifies the applicant in writing of the amount of time that will be required to make the decision and the reasons for this time period.

(b) Requirements otherwise applicable to holders of master permits shall be deemed satisfied by a holder of a cable franchise in good standing.

(c) Where the master permit does not contain procedures to expedite approvals and the service provider requires action in less than thirty days, the service provider shall advise the city or town in writing of the reasons why a shortened time period is necessary and the time period within which action by the city or town is requested. The city or town shall reasonably cooperate to meet the request where practicable.

(d) A city or town may not deny a use permit to a service provider with an existing state-wide grant to occupy the right of way for wireline facilities on the basis of failure to obtain a master permit.

(3) The reasons for a denial of a master permit shall be supported by substantial evidence contained in a written record. A service provider adversely affected by the final action denying a master permit, or by an unreasonable failure to act on a master permit as set forth in subsection (1) of this section, may commence an action within thirty days to seek relief, which shall be limited to injunctive relief.

(4) A service provider adversely affected by the final action denying a use permit may commence an action within thirty days to seek relief, which shall be limited to injunctive relief. In any appeal of the final action denying a use permit, the standard for review and burden of proof shall be as set forth in RCW 36.70C.130.

(5) A city or town shall:

(a) In order to facilitate the scheduling and coordination of work in the right of way, provide as much advance notice as reasonable of plans to open the right of way to those service providers who are current users of the right of way or who

have filed notice with the clerk of the city or town within the past twelve months of their intent to place facilities in the city or town. A city is not liable for damages for failure to provide this notice. Where the city has failed to provide notice of plans to open the right of way consistent with this subsection, a city may not deny a use permit to a service provider on the basis that the service provider failed to coordinate with another project.

(b) Have the authority to require that facilities are installed and maintained within the right of way in such a manner and at such points so as not to inconvenience the public use of the right of way or to adversely affect the public, health, safety, and welfare.

(6) A service provider shall:

(a) Obtain all permits required by the city or town for the installation, maintenance, repair, or removal of facilities in the right of way;

(b) Comply with applicable ordinances, construction codes, regulations, and standards subject to verification by the city or town of such compliance;

(c) Cooperate with the city or town in ensuring that facilities are installed, maintained, repaired, and removed within the right of way in such a manner and at such points so as not to inconvenience the public use of the right of way or to adversely affect the public health, safety, and welfare;

(d) Provide information and plans as reasonably necessary to enable a city or town to comply with subsection (5) of this section, including, when notified by the city or town, the provision of advance planning information pursuant to the procedures established by the city or town;

(e) Obtain the written approval of the facility or structure owner, if the service provider does not own it, prior to attaching to or otherwise using a facility or structure in the right of way;

(f) Construct, install, operate, and maintain its facilities at its expense; and

(g) Comply with applicable federal and state safety laws and standards.

(7) Nothing in this section shall be construed as:

(a) Creating a new duty upon city or towns to be responsible for construction of facilities for service providers or to modify the right of way to accommodate such facilities;

(b) Creating, expanding, or extending any liability of a city or town to any third-party user of facilities or third-party beneficiary; or

(c) Limiting the right of a city or town to require an indemnification agreement as a condition of a service provider's facilities occupying the right of way.

(8) Nothing in this section creates, modifies, expands, or diminishes a priority of use of the right of way by a service provider or other utility, either in relation to other service providers or in relation to other users of the right of way for other purposes.

NEW SECTION. Sec. 4. (1) A city or town shall not adopt or enforce regulations or ordinances specifically relating to use of the right of way by a service provider that:

(a) Impose requirements that regulate the services or business operations of the service provider, except where otherwise authorized in state or federal law;

(b) Conflict with federal or state laws, rules, or regulations that specifically apply to the design, construction, and operation of facilities or with federal or state worker safety or public safety laws, rules, or regulations;

(c) Regulate the services provided based upon the content or kind of signals that are carried or are capable of being carried over the facilities, except where otherwise authorized in state or federal law; or

(d) Unreasonably deny the use of the right of way by a service provider for installing, maintaining, repairing, or removing facilities for telecommunications services or cable television services.

(2) Nothing in this chapter, including but not limited to the provisions of subsection (1)(d) of this section, limits the authority of a city or town to regulate the placement of facilities through its local zoning or police power, if the regulations do not otherwise:

(a) Prohibit the placement of all wireless or of all wireline facilities within the city or town;

(b) Prohibit the placement of all wireless or of all wireline facilities within city or town rights of way, unless the city or town is less than five square miles in size and has no commercial areas, in which case the city or town may make available land other than city or town rights of way for the placement of wireless facilities; or

(c) Violate section 253 of the telecommunications act of 1996, P.L. 104-104 (110 Stat. 56).

(3) This section does not amend, limit, repeal, or otherwise modify the authority of cities or towns to regulate cable television services pursuant to federal law.

NEW SECTION. Sec. 5. (1) A city or town shall not place or extend a moratorium on the acceptance and processing of applications, permitting, construction, maintenance, repair, replacement, extension, operation, or use of any facilities for personal wireless services, except as consistent with the guidelines for facilities siting implementation, as agreed to on August 5, 1998, by the federal communications commission's local and state government advisory committee, the cellular telecommunications industry association, the personal communications industry association, and the American mobile telecommunications association. Any city or town implementing such a moratorium shall, at the request of a service provider impacted by the moratorium, participate with the service provider in the informal dispute resolution process included with the guidelines for facilities siting implementation.

NEW SECTION. Sec. 6. (1) Cities and towns may require service providers to relocate authorized facilities within the right of way when reasonably necessary for construction, alteration, repair, or improvement of the right of way for purposes of public welfare, health, or safety.

(2) Cities shall notify service providers as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date that relocation must be completed, cities shall consult with affected service providers and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the city's overall project construction sequence and constraints, to safely complete the relocation. Service providers shall complete the relocation by the date specified, unless the city, or a reviewing court, establishes a later date for completion, after a showing by the service provider that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

(3) Service providers may not seek reimbursement for their relocation expenses from the city or town requesting relocation under subsection (1) of this section except:

(a) Where the service provider had paid for the relocation cost of the same facilities at the request of the city or town within the past five years, the service provider's share of the cost of relocation will be paid by the city or town requesting relocation;

(b) Where aerial to underground relocation of authorized facilities is required by the city or town under subsection (1) of this section, for service providers with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in the approved tariff if less, will be paid by the city or town requiring relocation; and

(c) Where the city or town requests relocation under subsection (1) of this section solely for aesthetic purposes, unless otherwise agreed to by the parties.

(4) Where a project in subsection (1) of this section is primarily for private benefit, the private party or parties shall reimburse the cost of relocation in the same proportion to their contribution to the costs of the project. Service providers will not be precluded from recovering their costs associated with relocation required under subsection (1) of this section, provided that the recovery is consistent with subsection (3) of this section and other applicable laws.

(5) A city or town may require the relocation of facilities at the service provider's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health, or welfare.

NEW SECTION. Sec. 7. A city or town may require that a service provider that is constructing, relocating, or placing ducts or conduits in public rights of way provide the city or town with additional duct or conduit and related structures necessary to access the conduit, provided that:

(1) The city or town enters into a contract with the service provider consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the service provider. If the city or town makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract

with the entity that constructed the conduit or duct, shall recover at least the fully allocated costs of the service provider. The service provider shall state both contract rates in the contract. The city or town shall inform the service provider of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the city or town.

(2) Except as otherwise agreed by the service provider and the city or town, the city or town shall agree that the requested additional duct or conduit space and related access structures will not be used by the city or town to provide telecommunications or cable television service for hire, sale, or resale to the general public.

(3) The city or town shall not require that the additional duct or conduit space be connected to the access structures and vaults of the service provider.

(4) The value of the additional duct or conduit requested by a city or town shall not be considered a public works construction contract.

(5) This section shall not affect the provision of an institutional network by a cable television provider under federal law.

Sec. 8. RCW 35.21.860 and 1983 2nd ex.s. c 3 s 39 are each amended to read as follows:

(1) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in RCW 82.04.065, or service provider for use of the right of way, except ~~((that))~~:

(a) A tax authorized by RCW 35.21.865 may be imposed ~~((and))~~;

(b) A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW;

(c) Taxes permitted by state law on service providers;

(d) Franchise requirements and fees for cable television services as allowed by federal law; and

(e) A site-specific charge pursuant to an agreement between the city or town and a service provider of personal wireless services acceptable to the parties for:

(i) The placement of new structures in the right of way regardless of height, unless the new structure is the result of a mandated relocation in which case no charge will be imposed if the previous location was not charged;

(ii) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, and the overall height of the replacement structure and the wireless facility is more than sixty feet;

or

(iii) The placement of personal wireless facilities on structures owned by the city or town located in the right of way. However, a site-specific charge shall not

apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the city or town.

A city or town is not required to approve the use permit for the placement of a facility for personal wireless services that meets one of the criteria in this subsection absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city or town. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights of way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location, and zoning requirements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the costs allowable under subsection (1) of this section.

NEW SECTION. Sec. 9. This act shall not preempt specific provisions in existing franchises or contracts between cities or towns and service providers.

NEW SECTION. Sec. 10. A new section is added to chapter 35A.21 RCW to read as follows:

Each code city is subject to the requirements and restrictions regarding facilities and rights of way under this chapter.

NEW SECTION. Sec. 11. Sections 1 through 7 and 9 of this act constitute a new chapter in Title 35 RCW.

Passed the Senate March 7, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 84

[House Bill 2531]

CAREER AND TECHNICAL STUDENT ORGANIZATIONS

AN ACT Relating to career and technical student organizations; adding a new section to chapter 28A.300 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that career and technical student organizations:

- (a) Prepare students for career experiences beyond high school;
- (b) Help students develop personal, leadership, technical, and occupational skills;
- (c) Are an integral component of vocational technical instruction programs; and
- (d) Directly help students achieve state learning goals, especially goals three and four with respect to critical thinking, problem solving, and decision-making skills.

(2) The legislature finds that career and technical student organizations are best situated to fulfill their important purpose if they are in existence pursuant to statute and receive ongoing assistance and support from the office of superintendent of public instruction.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) The superintendent of public instruction shall maintain support for state-wide coordination for career and technical student organizations by providing program staff support that is available to assist in meeting the needs of career and technical student organizations and their members and students. The superintendent shall provide at least one full-time equivalent program staff for purposes of implementing this section. The superintendent may provide additional support to the organizations through contracting with independent coordinators.

(2) Career and technical student organizations eligible for technical assistance and other support services under this section are organizations recognized as career and technical student organizations by:

- (a) The United States department of education; or
- (b) The superintendent of public instruction, if such recognition is recommended by the Washington association for career and technical education.

(3) Career and technical student organizations eligible for technical assistance and other support services under this section include, but are not limited to: The national FFA organization; family, career, and community leaders of America; skillsUSA; distributive education clubs of America; future business leaders of America; and the technology student association.

Passed the House February 10, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 85

[House Bill 2333]

BICYCLISTS

AN ACT Relating to rights and duties of bicyclists; amending RCW 46.61.235, 46.61.261, and 46.61.755; and adding a new section to chapter 46.61 RCW.

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

Sec. 1. RCW 46.61.235 and 1993 c 153 s 1 are each amended to read as follows:

(1) The operator of an approaching vehicle shall stop and remain stopped to allow a pedestrian or bicycle to cross the roadway within an unmarked or marked crosswalk when the pedestrian or bicycle is upon or within one lane of the half of the roadway upon which the vehicle is traveling or onto which it is turning. For purposes of this section "half of the roadway" means all traffic lanes carrying traffic in one direction of travel, and includes the entire width of a one-way roadway.

(2) No pedestrian or bicycle shall suddenly leave a curb or other place of safety and walk, run, or otherwise move into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Subsection (1) of this section does not apply under the conditions stated in RCW 46.61.240(2).

(4) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian or bicycle to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

Sec. 2. RCW 46.61.261 and 1975 c 62 s 41 are each amended to read as follows:

The driver of a vehicle shall yield the right of way to any pedestrian or bicycle on a sidewalk. The rider of a bicycle shall yield the right of way to a pedestrian on a sidewalk or crosswalk.

Sec. 3. RCW 46.61.755 and 1965 ex.s. c 155 s 80 are each amended to read as follows:

(1) Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in RCW 46.61.750 through 46.61.780 and except as to those provisions of this chapter which by their nature can have no application.

(2) Every person riding a bicycle upon a sidewalk or crosswalk must be granted all of the rights and is subject to all of the duties applicable to a pedestrian by this chapter.

NEW SECTION. **Sec. 4.** A new section is added to chapter 46.61 RCW to read as follows:

(1) A law enforcement officer may offer to transport a bicycle rider who appears to be under the influence of alcohol or any drug and who is walking or moving along or within the right of way of a public roadway, unless the bicycle rider is to be taken into protective custody under RCW 70.96A.120. The law enforcement officer offering to transport an intoxicated bicycle rider under this section shall:

- (a) Transport the intoxicated bicycle rider to a safe place; or
- (b) Release the intoxicated bicycle rider to a competent person.

(2) The law enforcement officer shall not provide the assistance offered if the bicycle rider refuses to accept it. No suit or action may be commenced or prosecuted against the law enforcement officer, law enforcement agency, the state of Washington, or any political subdivision of the state for any act resulting from the refusal of the bicycle rider to accept this assistance.

(3) The law enforcement officer may impound the bicycle operated by an intoxicated bicycle rider if the officer determines that impoundment is necessary to reduce a threat to public safety, and there are no reasonable alternatives to impoundment. The bicyclist will be given a written notice of when and where the impounded bicycle may be reclaimed. The bicycle may be reclaimed by the bicycle rider when the bicycle rider no longer appears to be intoxicated, or by an individual who can establish ownership of the bicycle. The bicycle must be returned without payment of a fee. If the bicycle is not reclaimed within thirty days, it will be subject to sale or disposal consistent with agency procedures.

Passed the House February 8, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 86

[House Bill 2579]

CHILD SUPPORT—ENFORCEMENT

AN ACT Relating to child support technical amendments necessary to implement the federal personal responsibility and work opportunity reconciliation act of 1996; amending RCW 26.18.055, 26.18.170, 26.18.180, 26.23.060, 67.16.020, 74.20.330, 74.20A.030, 74.20A.080, 74.20A.095, and 74.20A.180; and adding a new section to chapter 74.20A RCW.

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

Sec. 1. RCW 26.18.055 and 1997 c 58 s 942 are each amended to read as follows:

Child support debts, not paid when due, become liens by operation of law against all property of the debtor with priority of a secured creditor. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien attaches to all real and personal property of the debtor on the date of filing with the county auditor of the county in which the property is located. Liens filed by other states or jurisdictions that comply with the

procedural rules for filing liens under chapter 65.04 RCW shall be accorded full faith and credit and are enforceable without judicial notice or hearing.

Sec. 2. RCW 26.18.170 and 1995 c 34 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 be served:

(i) By regular mail;

(ii) In the manner prescribed for the service of a summons in a civil action;

(iii) By certified mail, return receipt requested; or

(iv) By electronic means if there is an agreement between the secretary of the department and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means.

(b) 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))~~ (c) The returned answer to the division of child support by the employer constitutes proof of service of the notice of enrollment in the case where the notice was served by regular mail.

(d) The division of child support may use uniform interstate forms adopted by the United States department of health and human services to take insurance enrollment actions under this section.

(e) 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))~~ twenty days and confirm that the child:

- (i) Has been enrolled in the health insurance plan;
- (ii) Will be enrolled; 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 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 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 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) 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.

Sec. 3. RCW 26.18.180 and 1989 c 416 s 9 are each amended to read as follows:

(1) An obligated parent's employer or union shall be liable for a fine of up to one thousand dollars per occurrence, if the employer or union fails or refuses, within ~~((thirty-five))~~ twenty days of receiving the order or notice for health insurance coverage to:

(a) Promptly enroll the obligated parent's child in the health insurance plan;
or

(b) Make a written answer to the person or entity who sent the order or notice for health insurance coverage stating that the child:

- (i) Will be enrolled in the next available open enrollment period; or
- (ii) Cannot be covered and explaining the reasons why coverage cannot be provided.

(2) Liability may be established and the fine may be collected by the office of support enforcement under chapter 74.20A or 26.23 RCW using any of the remedies contained in those chapters.

(3) Any employer or union who enrolls a child in a health insurance plan in compliance with chapter 26.18 RCW shall be exempt from liability resulting from such enrollment.

Sec. 4. RCW 26.23.060 and 1998 c 160 s 8 are each amended to read as follows:

(1) The division of child support may issue a notice of payroll deduction:

- (a) As authorized by a support order that contains a notice clearly stating that child support may be collected by withholding from earnings, wages, or benefits without further notice to the obligated parent; or
- (b) After service of a notice containing an income-withholding provision under this chapter or chapter 74.20A RCW.

(2) The division of child support shall serve a notice of payroll deduction upon a responsible parent's employer or upon the employment security department for the state in possession of or owing any benefits from the unemployment compensation fund to the responsible parent pursuant to Title 50 RCW:

- (a) In the manner prescribed for the service of a summons in a civil action;
- (h) By certified mail, return receipt requested;
- (c) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means; or
- (d) By regular mail to a responsible parent's employer unless the division of child support reasonably believes that service of process in the manner prescribed in (a) or (b) of this subsection is required for initiating an action to ensure employer compliance with the withholding requirement.

(3) Service of a notice of payroll deduction upon an employer or employment security department requires the employer or employment security department to immediately make a mandatory payroll deduction from the responsible parent's unpaid disposable earnings or unemployment compensation benefits. The employer or employment security department shall thereafter deduct each pay period the amount stated in the notice divided by the number of pay periods per month. The payroll deduction each pay period shall not exceed fifty percent of the responsible parent's disposable earnings.

(4) A notice of payroll deduction for support shall have priority over any wage assignment, garnishment, attachment, or other legal process.

(5) The notice of payroll deduction shall be in writing and include:

- (a) The name and social security number of the responsible parent;
- (b) The amount to be deducted from the responsible parent's disposable earnings each month, or alternate amounts and frequencies as may be necessary to facilitate processing of the payroll deduction;
- (c) A statement that the total amount withheld shall not exceed fifty percent of the responsible parent's disposable earnings;
- (d) The address to which the payments are to be mailed or delivered; and
- (e) A notice to the responsible parent warning the responsible parent that, despite the payroll deduction, the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as defined in RCW 74.20A.320.

(6) An informational copy of the notice of payroll deduction shall be mailed to the last known address of the responsible parent by regular mail.

(7) An employer or employment security department that receives a notice of payroll deduction shall make immediate deductions from the responsible parent's unpaid disposable earnings and remit proper amounts to the Washington state support registry within seven working days of the date the earnings are payable to the responsible parent.

(8) An employer, or the employment security department, upon whom a notice of payroll deduction is served, shall make an answer to the division of child support within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the responsible parent is employed by or receives earnings from the employer or receives unemployment compensation benefits from the employment security department, whether the employer or employment security department anticipates paying earnings or unemployment compensation benefits and the amount of earnings. If the responsible parent is no longer employed, or receiving earnings from the employer, the answer shall state the present employer's name and address, if known. If the responsible parent is no longer receiving unemployment compensation benefits from the employment security department, the answer shall state the present employer's name and address, if known.

The returned answer or a payment remitted to the division of child support by the employer constitutes proof of service of the notice of payroll deduction in the case where the notice was served by regular mail.

(9) The employer or employment security department may deduct a processing fee from the remainder of the responsible parent's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 26.18.090. The processing fee may not exceed: (a) Ten dollars for the first disbursement made to the Washington state support registry; and (b) one dollar for each subsequent disbursement to the registry.

(10) The notice of payroll deduction shall remain in effect until released by the division of child support, the court enters an order terminating the notice and approving an alternate arrangement under RCW 26.23.050, or until the employer no longer employs the responsible parent and is no longer in possession of or owing any earnings to the responsible parent. The employer shall promptly notify the office of support enforcement when the employer no longer employs the parent subject to the notice. For the employment security department, the notice of payroll deduction shall remain in effect until released by the division of child support or until the court enters an order terminating the notice.

(11) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section ~~((when))~~ whether the responsible parent is receiving earnings or unemployment compensation in this state or in another state.

Sec. 5. RCW 67.16.020 and 1989 c 385 s 5 are each amended to read as follows:

(1) It shall be the duty of the commission, as soon as it is possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern the race meets in this state. It shall determine and announce the place, time and duration of race meets for which license fees are exacted; and it shall be the duty of each person holding a license under the authority of this chapter, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with all rules and regulations promulgated and all orders issued by the commission. It shall be unlawful for any person to hold any race meet without having first obtained and having in force and effect a license issued by the commission as in this chapter provided; and it shall be unlawful for any owner, trainer or jockey to participate in race meets in this state without first securing a license therefor from the state racing commission, the fee for which shall be set by the commission which shall offset the cost of administration and shall not be for a period exceeding one year.

(2) The commission shall immediately suspend the license of a person who has been certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for a license under this chapter during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the support order. The procedure in RCW 74.20A.320 is the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order, and suspension of a license under this subsection, and satisfies the requirements of RCW 34.05.422.

Sec. 6. RCW 74.20.330 and 1997 c 58 s 936 are each amended to read as follows:

(1) Whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, each applicant or recipient is deemed to have made assignment to the department of any rights to a support obligation from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving public assistance, including any unpaid support obligation or support debt which has accrued at the time the assignment is made.

(2) Payment of public assistance under a ~~((state))~~ state-funded program, or a program funded under Title IV-A or IV-E of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 shall:

- (a) Operate as an assignment by operation of law; and
- (b) Constitute an authorization to the department to provide the assistance recipient with support enforcement services.

Sec. 7. RCW 74.20A.030 and 1997 c 58 s 934 are each amended to read as follows:

(1) The department shall be subrogated to the right of any dependent child or children or person having the care, custody, and control of said child or children, if public assistance money is paid to or for the benefit of the child under a ~~((state))~~ state-funded program, or a program funded under Title IV-A or IV-E of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys expended, based on the support obligation of the responsible parent established by a ~~((superior court))~~ child support order ~~((or RCW 74.20A.055))~~. Distribution of any support moneys shall be made in accordance with RCW 26.23.035.

(2) The department may initiate, continue, maintain, or execute an action to establish, enforce, and collect a support obligation, including establishing paternity and performing related services, under this chapter and chapter 74.20 RCW, or through the attorney general or prosecuting attorney under chapter 26.09, 26.18, 26.20, 26.21, 26.23, or 26.26 RCW or other appropriate statutes or the common law of this state, for so long as and under such conditions as the department may establish by regulation.

(3) Public assistance moneys shall be exempt from collection action under this chapter except as provided in RCW 74.20A.270.

(4) No collection action shall be taken against parents of children eligible for admission to, or children who have been discharged from a residential habilitation center as defined by RCW 71A.10.020~~((7))~~ (8). For the period July 1, 1993, through June 30, 1995, a collection action may be taken against parents of children with developmental disabilities who are placed in community-based residential

care. The amount of support the department may collect from the parents shall not exceed one-half of the parents' support obligation accrued while the child was in community-based residential care. The child support obligation shall be calculated pursuant to chapter 26.19 RCW.

Sec. 8. RCW 74.20A.080 and 1998 c 160 s 1 are each amended to read as follows:

(1) The secretary may issue to any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States, an order to withhold and deliver property of any kind, including but not restricted to earnings which are or might become due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States property which is or might become due, owing, or belonging to said debtor. Such order to withhold and deliver may be issued:

(a) At any time, if a responsible parent's support order:

(i) Contains notice that withholding action may be taken against earnings, wages, or assets without further notice to the parent; or

(ii) Includes a statement that other income-withholding action under this chapter may be taken without further notice to the responsible parent;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of parental responsibility under RCW 74.20A.056;

(d) Twenty-one days after service of a notice of support owed under RCW 26.23.110;

(e) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055; or

(f) When appropriate under RCW 74.20A.270.

(2) The order to withhold and deliver shall:

(a) State the amount to be withheld on a periodic basis if the order to withhold and deliver is being served to secure payment of monthly current support;

(b) State the amount of the support debt accrued;

(c) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

(d) Be served:

(i) In the manner prescribed for the service of a summons in a civil action;

(ii) By certified mail, return receipt requested;

(iii) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means; or

(iv) By regular mail to a responsible parent's employer unless the division of child support reasonably believes that service of process in the manner prescribed

in (d)(i) or (ii) of this subsection is required for initiating an action to ensure employer compliance with the withholding requirement.

(3) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section when the responsible parent is owed money or property that is located in this state or in another state.

(4) Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States upon whom service has been made is hereby required to:

(a) Answer said order to withhold and deliver 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; and

(b) Provide further and additional answers when requested by the secretary.

(5) The returned answer or a payment remitted to the division of child support by the employer constitutes proof of service of the ~~((notice of payroll deduction))~~ order to withhold and deliver in the case where the ~~((notice))~~ order was served by regular mail.

(6) Any such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States in possession of any property which may be subject to the claim of the department shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver; and

(ii) Within seven working days deliver the property to the secretary;

(iii) Continue to withhold earnings payable to the debtor at each succeeding disbursement interval as provided for in RCW 74.20A.090, and deliver amounts withheld from earnings to the secretary within seven working days of the date earnings are payable to the debtor;

(iv) Deliver amounts withheld from periodic payments to the secretary within seven working days of the date the payments are payable to the debtor;

(v) Inform the secretary of the date the amounts were withheld as requested under this section; or

(b) Furnish to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

(7) An order to withhold and deliver served under this section shall not expire until:

(a) Released in writing by the division of child support;

(b) Terminated by court order; ~~((or))~~

(c) ~~((The))~~ A person or entity ((receiving)), other than an employer as defined in Title 50 RCW, who has received the order to withhold and deliver does not possess property of or owe money to the debtor; or

(d) An employer who has received the order to withhold and deliver no longer employs, contracts, or owes money to the debtor under a contract of employment, express or implied.

(8) Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state, or agency, subdivision, or instrumentality of the United States subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary.

(9) Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(10) A person, firm, corporation, or association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the order to withhold and deliver under this chapter is not civilly liable to the debtor for complying with the order to withhold and deliver under this chapter.

(11) The secretary may hold the money or property delivered under this section in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability.

(12) Exemptions contained in RCW 74.20A.090 apply to orders to withhold and deliver issued under this section.

(13) The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for judicial review. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy.

(14) An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process.

(15) The division of child support shall notify any person, firm, corporation, association, or political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States required to withhold and deliver the earnings of a debtor under this action that they may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would

otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for each subsequent disbursement under the order to withhold and deliver.

Sec. 9. RCW 74.20A.095 and 1991 c 367 s 48 are each amended to read as follows:

When providing support enforcement services, the office of support enforcement may take action, under this chapter and chapter 26.23 RCW, against a responsible parent's earnings or assets, located in, or subject to the jurisdiction of, the state of Washington regardless of the presence or residence of the responsible parent. If the responsible parent resides in another state or country, the office of support enforcement shall, unless otherwise authorized by state or federal law, serve a notice under RCW 74.20A.040 more than sixty days before taking collection action.

Sec. 10. RCW 74.20A.180 and 1985 c 276 s 9 are each amended to read as follows:

If the secretary finds that the collection of any support debt, accrued under a ((superior court)) support order, based upon subrogation or an authorization to enforce and collect under RCW 74.20A.030, or assignment of, or a request for support enforcement services to enforce and collect the amount of support ordered by any ((superior court)) support order is in jeopardy, the secretary may make a written demand under RCW 74.20A.040 for immediate payment of the support debt and, upon failure or refusal immediately to pay said support debt, may file and serve liens pursuant to RCW 74.20A.060 and 74.20A.070, without regard to the twenty day period provided for in RCW 74.20A.040: PROVIDED, That no further action under RCW 74.20A.080, 74.20A.130, and 74.20A.140 may be taken until the notice requirements of RCW 74.20A.040 are met.

NEW SECTION. **Sec. 11.** A new section is added to chapter 74.20A RCW to read as follows:

(1) Before the state may assist another state or jurisdiction with a high-volume automated administrative enforcement of an interstate case, the requesting state must certify that:

(a) The requesting state has met all due process requirements for the establishment of the support order;

(b) The requesting state has met all due process requirements for the enforcement of the support order, including that the obligor has been notified that another state may take action against the obligor's wages, earnings, assets, or benefits, and may enforce against the obligor's real and personal property under the child support statutes of this state or any other state without further notice; and

(c) The amount of arrears transmitted by the requesting state is due under the support order.

(2) Receipt of a request for assistance on automated enforcement of an interstate case by the state constitutes certification under this section.

Passed the House February 10, 2000.
Passed the Senate March 3, 2000.
Approved by the Governor March 24, 2000.
Filed in Office of Secretary of State March 24, 2000.

CHAPTER 87

[Second Substitute House Bill 2637]

VULNERABLE ADULT CAREGIVERS—BACKGROUND CHECKS

AN ACT Relating to background checks on persons in contact with vulnerable adults; and amending RCW 43.43.832, 43.20A.710, 74.39A.050, 74.34.095, and 74.39A.095.

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

Sec. 1. RCW 43.43.832 and 1997 c 392 s 524 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 shall 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.

(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 must consider the information listed in subsection (1) of this section in the following circumstances:

(a) When considering persons for state ~~((positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults))~~ employment in positions directly responsible for the

supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

~~((e))~~ (d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

(6)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a

disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(g) For the purposes of this subsection, "health care facility" means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(7) If a federal bureau of investigation check is required in addition to the state background check by the department of social and health services, an applicant who is not disqualified based on the results of the state background check shall be eligible for a one hundred twenty day provisional approval to hire, pending the outcome of the federal bureau of investigation check. The department may extend the provisional approval until receipt of the federal bureau of investigation check. If the federal bureau of investigation check disqualifies an applicant, the department shall notify the requestor that the provisional approval to hire is withdrawn and the applicant may be terminated.

Sec. 2. RCW 43.20A.710 and 1999 c 336 s 7 are each amended to read as follows:

(1) The secretary shall investigate the conviction records, pending charges or disciplinary board final decisions of:

(a) Persons being considered for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities; ~~((and))~~

(b) Persons being considered for state employment in positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) Individual providers who are paid by the state ~~((for))~~ and providers who are paid by home care agencies to provide in-home services ~~((and hired by individuals))~~ involving unsupervised access to persons with physical ~~((disabili-~~

ties)), mental, or developmental disabilities((:)) or mental illness, or ((mental impairment)) to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW; and

(d) Individuals or businesses or organizations for the care, supervision, case management, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(2) The investigation may include an examination of state and national criminal identification data. The secretary shall use the information solely for the purpose of determining the character, suitability, and competence of these applicants.

(3) An individual provider or home care agency provider who has resided in the state less than three years before applying for employment involving unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted for the purpose of investigating conviction records both through the Washington state patrol and the federal bureau of investigation. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110. However, this subsection does not supersede RCW 74.15.030(2)(b).

(4) An individual provider or home care agency provider hired to provide in-home care for and having unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must have no conviction for a disqualifying crime under RCW 43.43.830 and 43.43.842. An individual or home care agency provider must also have no conviction for a crime relating to drugs as defined in RCW 43.43.830. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110.

(5) The secretary shall provide the results of the ((state)) background check on individual providers to the ((individuals with physical disabilities, developmental disabilities, mental illness, or mental impairment)) persons hiring them or to their legal guardians, if any, for their determination of the character, suitability, and competence of the applicants. If ((an individual)) the person elects to hire or retain an individual provider after receiving notice from the department that the applicant has a conviction for an offense that would disqualify the applicant from ((employment with the department)) having unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, then the secretary shall deny payment for any subsequent services rendered by the disqualified individual provider.

((4)) (6) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose.

**Sec. 3. RCW 74.39A.050 and 1999 c 336 s 5 are each amended to read as follows:*

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, resident managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.

(8) No provider or staff, or prospective provider or staff, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW

shall be employed in the care of and have unsupervised access to vulnerable adults.

~~(9) ((The department shall establish, by rule, a state registry which contains identifying information about personal care aides identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information.~~

~~—(10))~~ The department shall by rule develop training requirements for individual providers and home care agency providers. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirement within the time limit specified by the department by rule.

~~((11))~~ (10) The department shall establish, by rule, training, background checks, and other quality assurance requirements for personal aides who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers.

~~((12))~~ (11) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

~~((13))~~ (12) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have

the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.

**Sec. 3 was vetoed. See message at end of chapter.*

Sec. 4. RCW 74.34.095 and 1999 c 176 s 17 are each amended to read as follows:

(1) The following information is confidential and not subject to disclosure, except as provided in this section:

(a) A report of abandonment, abuse, financial exploitation, or neglect made under this chapter;

(b) The identity of the person making the report; and

(c) All files, reports, records, communications, and working papers used or developed in the investigation or provision of protective services.

(2) Information considered confidential may be disclosed only for a purpose consistent with this chapter or as authorized by chapter 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care ombudsman programs under federal law or state law, chapter 43.190 RCW.

(3) A court or presiding officer in an administrative proceeding may order disclosure of confidential information only if the court, or presiding officer in an administrative proceeding, determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the vulnerable adult or individual who made the report. The court or presiding officer in an administrative hearing may place restrictions on such disclosure as the court or presiding officer deems proper.

Sec. 5. RCW 74.39A.095 and 1999 c 175 s 3 are each amended to read as follows:

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide adequate oversight of the care being provided to consumers receiving services under this section. Such oversight shall include, but is not limited to:

(a) Verification that the individual provider has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) Home visits or telephone contacts sufficient to ensure that the plan of care is being appropriately implemented;

(d) Reassessment and reauthorization of services;

(e) Monitoring of individual provider performance; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement that the individual provider has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by ~~((an {a}))~~ a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

Passed the House March 8, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 24, 2000, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2000.

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

"I am returning herewith, without my approval as to section 3, Second Substitute House Bill No. 2637 entitled:

"AN ACT Relating to background checks on persons in contact with vulnerable adults;"

This bill expands the requirements for criminal background checks for people who provide care or have unsupervised access to vulnerable adults. This bill gives the Department of Social and Health Services some additional tools to ensure the safety of some of our most vulnerable citizens.

Section 3 would have eliminated a current requirement that DSHS maintain a registry of personal care aides against whom there have been substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult. This registry was established only last year, and its elimination would be a step backwards in assuring quality care and safety for people with disabilities.

For these reasons, I have vetoed section 3 of Second Substitute House Bill No. 2637.

With the exception of section 3, Second Substitute House Bill No. 2637 is approved."

CHAPTER 88

[House Bill 2684]

SOCIAL AND HEALTH SERVICES—ACCESS TO EDUCATIONAL RECORDS

AN ACT Relating to records that are accessible by the department of social and health services; amending RCW 74.13.285; and adding a new section to chapter 28A.150 RCW.

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

NEW SECTION. Sec. I. A new section is added to chapter 28A.150 RCW to read as follows:

In order to effectively serve students who are under the jurisdiction of the juvenile justice system as dependent pursuant to chapter 13.34 RCW, education records shall be released upon request to the department of social and health services provided that the department of social and health services certifies that it will not disclose to any other party the education records without prior written consent of the parent or student unless authorized to disclose the records under state law. The department of social and health services is authorized to disclose education records it obtains pursuant to this section to a foster parent, guardian, or other entity authorized by the department of social and health services to provide residential care to the student.

Sec. 2. RCW 74.13.285 and 1997 c 272 s 5 are each amended to read as follows:

(1) Within available resources, the department shall prepare a passport containing all known and available information concerning the mental, physical, health, and educational status of the child for any child who has been in a foster home for ninety consecutive days or more. The passport shall contain education records obtained pursuant to section 1 of this act. The passport shall be provided to a foster parent at any placement of a child covered by this section. The department shall update the passport during the regularly scheduled court reviews required under chapter 13.34 RCW.

New placements after July 1, 1997, shall have first priority in the preparation of passports. Within available resources, the department may prepare passports for any child in a foster home on July 1, 1997, provided that no time spent in a foster home before July 1, 1997, shall be included in the computation of the ninety days.

(2) In addition to the requirements of subsection (1) of this section, the department shall, within available resources, notify a foster parent before placement of a child of any known health conditions that pose a serious threat to the child and any known behavioral history that presents a serious risk of harm to the child or others.

(3) The department shall hold harmless the provider for any unauthorized disclosures caused by the department.

Passed the House March 6, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 89

[Substitute House Bill 2912]

CHILDREN IN OUT-OF-HOME CARE—PSYCHIATRIC MEDICATIONS

AN ACT Relating to use of psychiatric medications by children in state custody; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The department of social and health services shall report to the legislature the following information regarding children in out-of-home care who remained in out-of-home care longer than ninety days for at least one placement episode and received "fee for service" medical assistance during fiscal year 1999:

- (a) The number of children who were prescribed medication during an out-of-home care episode;
- (b) The medical diagnosis for all children on prescribed medications;
- (c) The number, types, and frequency of medications prescribed to children;
- (d) The number of children receiving multiple medications;
- (e) The number of children prescribed Ritalin; and
- (f) The total number of children in out-of-home care episodes exceeding ninety days during fiscal year 1999, and the number of those children receiving medication.

(2) For purposes of this section, "medication" means psychotropic medication or other medication prescribed to address psychiatric or other behavioral issues.

(3) The report is due to the legislature on or before December 15, 2000.

Passed the House March 8, 2000.

Passed the Senate March 7, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 90

[House Bill 2344]

COMMUNITY CORRECTIONS CASELOAD FORECASTING

AN ACT Relating to community corrections caseload forecasting; amending RCW 43.88C.010; and providing an effective date.

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

Sec. 1. RCW 43.88C.010 and 1997 c 168 s 1 are each amended to read as follows:

- (1) The caseload forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ a caseload forecast supervisor to supervise the preparation of all caseload forecasts. As used in this chapter, "supervisor" means the caseload forecast supervisor.

(3) Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(4) The caseload forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official state caseload forecasts prepared under RCW 43.88C.020. If the council is unable to approve a forecast before a date required in RCW 43.88C.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(5) A council member who does not cast an affirmative vote for approval of the official caseload forecast may request, and the supervisor shall provide, an alternative forecast based on assumptions specified by the member.

(6) Members of the caseload forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) "Caseload," as used in this chapter, means the number of persons expected to meet entitlement requirements and require the services of public assistance programs, state correctional institutions, state correctional noninstitutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support.

(8) Unless the context clearly requires otherwise, the definitions provided in RCW 43.88.020 apply to this chapter.

NEW SECTION. Sec. 2. This act takes effect July 1, 2000.

Passed the House March 6, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 91

[Engrossed House Bill 2424]

SEX OFFENDERS—REGISTRATION—MONITORING

AN ACT Relating to compliance with federal standards for monitoring sex offenders; amending RCW 9A.44.135 and 9A.44.140; and reenacting and amending RCW 9A.44.130 and 70.48.470.

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

Sec. 1. RCW 9A.44.135 and 1999 c 196 s 15 are each amended to read as follows:

(1) When an offender registers with the county sheriff pursuant to RCW 9A.44.130, the county sheriff shall notify the police chief or town marshal of the jurisdiction in which the offender has registered to live. If the offender registers to live in an unincorporated area of the county, the sheriff shall make reasonable attempts to verify that the offender is residing at the registered address. If the offender registers to live in an incorporated city or town, the police chief or town marshal shall make reasonable attempts to verify that the offender is residing at the registered address. Reasonable attempts at verifying an address shall include at a minimum:

(a) For offenders who have not been previously designated sexually violent predators under chapter 71.09 RCW or an equivalent procedure in another jurisdiction, each year the chief law enforcement officer of the jurisdiction where the offender is registered to live shall send by certified mail, with return receipt requested, a nonforwardable verification form to the offender at the offender's last registered address.

(b) For offenders who have been previously designated sexually violent predators under chapter 71.09 RCW or the equivalent procedure in another jurisdiction, even if the designation has subsequently been removed, every ninety days the county sheriff shall send by certified mail, with return receipt requested, a nonforwardable verification form to the offender at the offender's last registered address.

(c) The offender must sign the verification form, state on the form whether he or she still resides at the last registered address, and return the form to the chief law enforcement officer of the jurisdiction where the offender is registered to live within ten days after receipt of the form.

(2) The chief law enforcement officer of the jurisdiction where the offender has registered to live shall make reasonable attempts to locate any sex offender who fails to return the verification form or who cannot be located at the registered address. If the offender fails to return the verification form or the offender is not at the last registered address, the chief law enforcement officer of the jurisdiction where the offender has registered to live shall promptly forward this information to the county sheriff and to the Washington state patrol for inclusion in the central registry of sex offenders.

(3) When an offender notifies the county sheriff of a change to his or her residence address pursuant to RCW 9A.44.130, and the new address is in a different law enforcement jurisdiction, the county sheriff shall notify the police chief or town marshal of the jurisdiction from which the offender has moved.

Sec. 2. RCW 9A.44.130 and 1999 sp.s. c 6 s 2 and 1999 c 352 s 9 are each reenacted and amended to read as follows:

(1) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody 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 as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person. In addition, any such adult or juvenile who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution. Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(2) This section may not be construed to confer any powers pursuant to RCW 4.24.500 upon the public safety department of any public or private institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) 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, and (B) kidnapping offenders who on or after July 27, 1997, are in custody 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 at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) 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. Kidnapping offenders who, on July 27, 1997, 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 kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, 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) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, 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, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release

with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. 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. Kidnapping offenders who, on July 27, 1997, 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 kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **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, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, 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) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping 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, and to kidnapping 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 July 27, 1997. Sex offenders and kidnapping 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) **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 (A) 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, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, 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 before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, 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 sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. 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 (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(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 (10)

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 (4)(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.

(5)(a) 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 seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of 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. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. ~~((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.))~~ Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within fourteen days after ceasing to have a fixed residence. The

notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report in person to the sheriff of the county where he or she is registered. If he or she has been classified as a risk level I sex or kidnapping offender, he or she must report monthly. If he or she has been classified as a risk level II or III sex or kidnapping offender, he or she must report weekly. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within fourteen days after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means any offense defined as a sex offense by RCW 9.94A.030 and any violation of RCW 9.68A.040 (sexual exploitation of a minor), 9.68A.050 (dealing in depictions of minor engaged in sexually explicit conduct), 9.68A.060 (sending, bringing into state depictions of minor engaged in sexually explicit conduct), 9.68A.090 (communication with minor for immoral purposes), 9.68A.100 (patronizing juvenile prostitute), or 9A.44.096 (sexual misconduct with a minor in the second degree), 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.

(b) "Kidnapping offense" means the crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent.

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

(11) A person who knowingly fails to register or who moves within the state 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 felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

Sec. 3. RCW 9A.44.140 and 1998 c 220 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, or a person convicted of any sex offense or kidnapping offense who has one or more prior ~~((conviction{s}))~~ convictions for a sex offense or kidnapping offense: Such person may only be relieved of the duty to register under subsection (3) or (4) of this section.

(b) For a person convicted of a class B felony, and the person does not have one or more prior ~~((conviction{s}))~~ convictions for a sex offense or kidnapping offense: 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, a violation of RCW 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to commit a class C felony, and the person does not have one or more prior ~~((conviction{s}))~~ convictions for a sex offense or kidnapping offense: 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 or kidnapping offense.

(3)(a) Any person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty, if the person has spent ten consecutive years in the community without being convicted of any new offenses. 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 (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.

(b)(i) The court may not relieve a person of the duty to register if the person has been determined to be a sexually violent predator as defined in RCW 71.09.020, or has been convicted of a sex offense or kidnapping offense that is a class A felony and that was committed with forcible compulsion on or after the effective date of this act.

(ii) Any person subject to (b)(i) of this subsection may petition the court to be exempted from any community notification requirements that the person may be subject to fifteen years after the later of the entry of the judgment and sentence or the last date of release from confinement, including full-time residential treatment, pursuant to the conviction, if the person has spent the time in the community without being convicted of any new offense.

(4) An offender having a duty to register under RCW 9A.44.130 for a sex offense or kidnapping 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.

(a) The court may relieve the petitioner of the duty to register for a sex offense or kidnapping 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.

(b) The court may relieve the petitioner of the duty to register for a sex offense or kidnapping offense that was committed while the petitioner was under the age of fifteen if the petitioner ~~((a))~~ (i) has not been adjudicated of any additional sex offenses or kidnapping offenses during the twenty-four months following the adjudication for the offense giving rise to the duty to register, and ~~((b) the petitioner)~~ (ii) 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.

This subsection shall not apply to juveniles prosecuted as adults.

(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.

(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.

Sec. 4. RCW 70.48.470 and 1997 c 364 s 3 and 1997 c 113 s 7 are each reenacted and amended to read as follows:

(1) A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a sex offense as defined in RCW 9.94A.030 or a kidnapping offense as defined in RCW 9A.44.130 of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification. The person shall also obtain from the inmate the county of the inmate's residence upon release from jail and, where applicable, the city.

(2) When a sex offender or a person convicted of a kidnapping offense as defined in RCW 9A.44.130 under local government jurisdiction will reside in a county other than the county of conviction upon discharge or release, the chief law enforcement officer of the jail or his or her designee shall give notice of the inmate's discharge or release to the sheriff of the county and, where applicable, to the police chief of the city where the offender will reside.

Passed the House March 4, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 92

[Substitute House Bill 2491]

DNA—POSTCONVICTION TESTING

AN ACT Relating to DNA testing of evidence; amending RCW 10.37.050; adding a new section to chapter 10.73 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. A new section is added to chapter 10.73 RCW to read as follows:

(1) On or before December 31, 2002, a person in this state who has been sentenced to death or life imprisonment without possibility of release or parole and who has been denied postconviction DNA testing may submit a request to the county prosecutor in the county where the conviction was obtained for postconviction DNA testing, if DNA evidence was not admitted because the court ruled DNA testing did not meet acceptable scientific standards or DNA testing technology was not sufficiently developed to test the DNA evidence in the case. On and after January 1, 2003, a person must raise the DNA issues at trial or on appeal.

(2) The prosecutor shall screen the request. The request shall be reviewed based upon the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis. Upon determining that testing should occur and the evidence still exists, the prosecutor shall request DNA testing by the Washington state patrol crime laboratory. Contact with victims shall be handled through victim/witness divisions.

(3) A person denied a request made pursuant to subsections (1) and (2) of this section has a right to appeal his or her request within thirty days of denial of the request by the prosecutor. The appeal shall be to the attorney general's office. If the attorney general's office determines that it is likely that the DNA testing would demonstrate innocence on a more probable than not basis, then the attorney general's office shall request DNA testing by the Washington state patrol crime laboratory.

NEW SECTION. Sec. 2. By December 1, 2001, the office of public defense shall prepare a report detailing the following: (1) The number of postconviction DNA test requests approved by the respective prosecutor; (2) the number of postconviction DNA test requests denied by the respective prosecutor and a summary of the basis for the denials; (3) the number of appeals for postconviction DNA testing approved by the attorney general's office; (4) the number of appeals for postconviction DNA testing denied by the attorney general's office and a summary of the basis for the denials; and (5) a summary of the results of the postconviction DNA tests conducted pursuant to section 1 (2) and (3) of this act. The report shall also provide an estimate of the number of persons convicted of crimes where DNA evidence was not admitted because the court ruled DNA testing did not meet acceptable scientific standards or where DNA testing technology was not sufficiently developed to test the DNA evidence in the case.

Sec. 3. RCW 10.37.050 and 1891 c 28 s 29 are each amended to read as follows:

The indictment or information is sufficient if it can be understood therefrom—

- (1) That it is entitled in a court having authority to receive ~~((fit.))~~ it;
- (2) That it was found by a grand jury or prosecuting attorney of the county in which the court was held;
- (3) That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name or by reference to a unique genetic sequence of deoxyribonucleic acid, with the statement that his real name is ~~((to the jury))~~ unknown;
- (4) That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein;
- (5) That the crime was committed at some time previous to the finding of the indictment or filing of the information, and within the time limited by law for the commencement of an action therefor;
- (6) That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;
- (7) The act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case.

NEW SECTION. Sec. 4. Nothing in this act is intended to create a legal right or cause of action. Nothing in this act is intended to deny or alter any existing legal right or cause of action. Nothing in this act should be interpreted to deny postconviction DNA testing requests under existing law by convicted and incarcerated persons who were sentenced to confinement for a term less than life or the death penalty.

Passed the House March 9, 2000.

Passed the Senate March 8, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 93

[House Bill 2452]

HEALTH PROFESSIONS—TECHNICAL CHANGES—TERMINOLOGY UPDATES

AN ACT Relating to making technical changes, wording updates, and other corrections to department of health statutes covering health professions and facilities; amending RCW 18.35.240, 18.35.240, 18.35.250, 18.35.250, 18.48.020, 18.52.030, 18.83.135, 18.92.013, 18.92.015, 18.92.030, 18.92.060, 18.92.125, 18.92.140, 18.92.145, 18.120.020, 18.73.030, 18.73.101, 18.73.130, 18.73.140, 70.168.020, 71.12.455, 71.12.460, 71.12.470, 71.12.480, 71.12.510, 71.12.520, 18.46.005, 18.46.010, 18.46.020, 18.46.040, 18.46.060, 18.46.070, 18.46.080, 18.46.090, 18.46.110, 18.46.120, 18.46.130, 18.46.140, 18.57A.070, 18.84.020, and 18.89.140; reenacting and amending RCW 71.12.500; adding

a new section to chapter 71.12 RCW; repealing RCW 18.48.040, 18.83.910, and 18.83.911; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 18.35.240 and 1996 c 200 s 30 are each amended to read as follows:

(1) Every ~~((establishment))~~ individual engaged in the fitting and dispensing of hearing instruments shall ~~((file with the department))~~ be covered by a surety bond ~~((in the sum))~~ of ten thousand dollars ~~((, running to the state of Washington))~~ or more, for the benefit of any person injured or damaged as a result of any violation by the ~~((establishment's))~~ licensee, certificate or permit holder, or their employees or agents of any of the provisions of this chapter or rules adopted by the secretary.

(2) In lieu of the surety bond required by this section, the ~~((establishment may file with the department a cash))~~ licensee or certificate or permit holder may deposit cash or other negotiable security ~~((acceptable to the department))~~ in a banking institution as defined in chapter 30.04 RCW or a credit union as defined in chapter 31.12 RCW. All obligations and remedies relating to surety bonds shall apply to deposits and security filed in lieu of surety bonds.

(3) If a cash deposit or other negotiable security is filed, ~~((the department shall deposit the funds. The cash or other negotiable security deposited with the department shall be returned to the depositor))~~ the licensee or certificate or permit holder shall maintain such cash or other negotiable security for one year after ~~((the establishment has discontinued))~~ discontinuing the fitting and dispensing of hearing instruments ~~((if no legal action has been instituted against the establishment, its agents or employees, or the cash deposit or other security. The establishment owners shall notify the department if the establishment is sold, changes names, or has discontinued the fitting and dispensing of hearing instruments in order that the cash deposit or other security may be released at the end of one year from that date.~~

~~—(4) A surety may file with the department notice of withdrawal of the bond of the establishment. Upon filing a new bond, or upon the expiration of sixty days after the filing of notice of withdrawal by the surety, the liability of the former surety for all future acts of the establishment terminates.~~

~~—(5) Upon the filing with the department notice by a surety of withdrawal of the surety on the bond of an establishment or upon the cancellation by the department of the bond of a surety under this section, the department shall immediately give notice to the establishment by certified or registered mail with return receipt requested addressed to the establishment's last place of business as filed with the department.~~

~~—(6) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked).~~

~~((7))~~ (4) Each invoice for the purchase of a hearing instrument provided to a customer must clearly display on the first page the bond number ~~((of the establishment or))~~ covering the licensee or certificate or permit holder responsible for fitting/dispensing the hearing instrument.

(5) All licensed hearing instrument fitter/dispensers, certified audiologists, and permit holders must verify compliance with the requirement to hold a surety bond or cash or other negotiable security by submitting a signed declaration of compliance upon annual renewal of their license, certificate, or permit. Up to twenty-five percent of the credential holders may be randomly audited for surety bond compliance after the credential is renewed. It is the credential holder's responsibility to submit a copy of the original surety bond or bonds, or documentation that cash or other negotiable security is held in a banking institution during the time period being audited. Failure to comply with the audit documentation request or failure to supply acceptable documentation within thirty days may result in disciplinary action.

Sec. 2. RCW 18.35.240 and 1998 c 142 s 18 are each amended to read as follows:

(1) Every ~~((establishment))~~ individual engaged in the fitting and dispensing of hearing instruments shall ~~((file with the department))~~ be covered by a surety bond ~~((in the sum))~~ of ten thousand dollars ~~((, running to the state of Washington))~~ or more, for the benefit of any person injured or damaged as a result of any violation by the ~~((establishment's))~~ licensee, certificate or permit holder, or their employees or agents of any of the provisions of this chapter or rules adopted by the secretary.

(2) In lieu of the surety bond required by this section, the ~~((establishment may file with the department a cash))~~ licensee or certificate or permit holder may deposit cash or other negotiable security ~~((acceptable to the department))~~ in a banking institution as defined in chapter 30.04 RCW or a credit union as defined in chapter 31.12 RCW. All obligations and remedies relating to surety bonds shall apply to deposits and security filed in lieu of surety bonds.

(3) If a cash deposit or other negotiable security is filed, ~~((the department shall deposit the funds. The cash or other negotiable security deposited with the department shall be returned to the depositor))~~ the licensee or certificate or permit holder shall maintain such cash or other negotiable security for one year after ~~((the establishment has discontinued))~~ discontinuing the fitting and dispensing of hearing instruments ~~((if no legal action has been instituted against the establishment, its agents or employees, or the cash deposit or other security. The establishment owners shall notify the department if the establishment is sold, changes names, or has discontinued the fitting and dispensing of hearing instruments in order that the cash deposit or other security may be released at the end of one year from that date.~~

~~—(4) A surety may file with the department notice of withdrawal of the bond of the establishment. Upon filing a new bond, or upon the expiration of sixty days~~

~~after the filing of notice of withdrawal by the surety, the liability of the former surety for all future acts of the establishment terminates.~~

~~—(5) Upon the filing with the department notice by a surety of withdrawal of the surety on the bond of an establishment or upon the cancellation by the department of the bond of a surety under this section, the department shall immediately give notice to the establishment by certified or registered mail with return receipt requested addressed to the establishment's last place of business as filed with the department.~~

~~—(6) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked).~~

~~((7)) (4) Each invoice for the purchase of a hearing instrument provided to a customer must clearly display on the first page the bond number ((of the establishment or)) covering the licensee or certificate or interim permit holder responsible for fitting/dispensing the hearing instrument.~~

(5) All licensed hearing instrument fitter/dispensers, certified audiologists, and permit holders must verify compliance with the requirement to hold a surety bond or cash or other negotiable security by submitting a signed declaration of compliance upon annual renewal of their license, certificate, or permit. Up to twenty-five percent of the credential holders may be randomly audited for surety bond compliance after the credential is renewed. It is the credential holder's responsibility to submit a copy of the original surety bond or bonds, or documentation that cash or other negotiable security is held in a banking institution during the time period being audited. Failure to comply with the audit documentation request or failure to supply acceptable documentation within thirty days may result in disciplinary action.

Sec. 3. RCW 18.35.250 and 1996 c 200 s 31 are each amended to read as follows:

(1) In addition to any other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond, cash deposit, or security in lieu of a surety bond required by this chapter, by any person having a claim against a licensee or certificate or permit holder, agent, or ((establishment)) employee for any violation of this chapter or any rule adopted under this chapter. The aggregate liability of the surety, cash deposit, or other negotiable security to all claimants shall in no event exceed the sum of the bond. Claims shall be satisfied in the order of judgment rendered.

(2) An action upon the bond, cash deposit, or other negotiable security shall be commenced by serving and filing ((the)) a complaint ((within one year from the date of the cancellation of the bond. An action upon a cash deposit or other security shall be commenced by serving and filing the complaint within one year from the date of notification to the department of the change in ownership of the establishment or the discontinuation of the fitting and dispensing of hearing instruments by that establishment. Two copies of the complaint shall be served by

~~registered or certified mail, return receipt requested, upon the department at the time the suit is started. The service constitutes service on the surety. The secretary shall transmit one copy of the complaint to the surety within five business days after the copy has been received.~~

~~—(3) The secretary shall maintain a record, available for public inspection, of all suits commenced under this chapter under surety bonds, or the cash or other security deposited in lieu of the surety bond. In the event that any final judgment impairs the liability of the surety upon a bond so furnished or the amount of the deposit so that there is not in effect a bond undertaking or deposit in the full amount prescribed in this section, the department shall suspend the license or certificate until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.~~

~~—(4) If a judgment is entered against the deposit or security required under this chapter, the department shall, upon receipt of a certified copy of a final judgment, pay the judgment from the amount of the deposit or security).~~

Sec. 4. RCW 18.35.250 and 1998 c 142 s 19 are each amended to read as follows:

(1) In addition to any other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond, cash deposit, or security in lieu of a surety bond required by this chapter, by any person having a claim against a licensee or certificate or interim permit holder, agent, or ~~((establishment))~~ employee for any violation of this chapter or any rule adopted under this chapter. The aggregate liability of the surety, cash deposit, or other negotiable security to all claimants shall in no event exceed the sum of the bond. Claims shall be satisfied in the order of judgment rendered.

(2) An action upon the bond, cash deposit, or other negotiable security shall be commenced by serving and filing ~~((the))~~ a complaint ~~((within one year from the date of the cancellation of the bond. An action upon a cash deposit or other security shall be commenced by serving and filing the complaint within one year from the date of notification to the department of the change in ownership of the establishment or the discontinuation of the fitting and dispensing of hearing instruments by that establishment. Two copies of the complaint shall be served by registered or certified mail, return receipt requested, upon the department at the time the suit is started. The service constitutes service on the surety. The secretary shall transmit one copy of the complaint to the surety within five business days after the copy has been received.~~

~~—(3) The secretary shall maintain a record, available for public inspection, of all suits commenced under this chapter under surety bonds, or the cash or other security deposited in lieu of the surety bond. In the event that any final judgment impairs the liability of the surety upon a bond so furnished or the amount of the deposit so that there is not in effect a bond undertaking or deposit in the full amount prescribed in this section, the department shall suspend the license or~~

~~certificate until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.~~

~~(4) If a judgment is entered against the deposit or security required under this chapter, the department shall, upon receipt of a certified copy of a final judgment, pay the judgment from the amount of the deposit or security).~~

Sec. 5. RCW 18.48.020 and 1996 c 81 s 4 are each amended to read as follows:

(1) The secretary shall register adult family home providers and resident managers.

(2) The secretary, by policy or rule, shall define terms and establish forms and procedures for registration applications, including the payment of registration fees pursuant to RCW 43.70.250. An application for an adult family home resident manager or provider registration shall include at least the following information:

(a) Name and address; and

(b) If the provider is a corporation, copies of its articles of incorporation and current bylaws, together with the names and addresses of its officers and directors.

~~((3) The secretary shall adopt policies or rules to establish the registration periods, fees, and procedures. If the adult family home is sold or ownership or management is transferred, the registration shall be voided and the provider and resident manager shall apply for a new registration.))~~

Sec. 6. RCW 18.52.030 and 1992 c 53 s 3 are each amended to read as follows:

Nursing homes operating within this state shall be under the active, overall administrative charge and supervision of an on-site full-time administrator licensed as provided in this chapter. No person acting in any capacity, unless the holder of a nursing home administrator's license issued under this chapter, shall be charged with the overall responsibility to make decisions or direct actions involved in managing the internal operation of a nursing home, except as specifically delegated in writing by the administrator to identify a responsible person to act on the administrator's behalf when the administrator is absent. The administrator shall review the decisions upon the administrator's return and amend the decisions if necessary. The board shall define by rule the parameters for on-site full-time administrators in nursing homes with small resident populations and nursing homes in rural areas, or separately licensed facilities collocated on the same campus(~~as well as provide for the administrative requirements for nursing homes that are temporarily without administrators~~)).

Sec. 7. RCW 18.83.135 and 1999 c 66 s 2 are each amended to read as follows:

In addition to the authority prescribed under RCW 18.130.050, the board shall have the following authority:

(1) To maintain records of all activities, and to publish and distribute to all psychologists at least once each year abstracts of significant activities of the ~~((committee))~~ board;

(2) To obtain the written consent of the complaining client or patient or their legal representative, or of any person who may be affected by the complaint, in order to obtain information which otherwise might be confidential or privileged; and

(3) To apply the provisions of the uniform disciplinary act, chapter 18.130 RCW, to all persons licensed as psychologists under this chapter.

Sec. 8. RCW 18.92.013 and 1993 c 78 s 2 are each amended to read as follows:

(1) A veterinarian legally prescribing drugs may delegate to a registered veterinary medication clerk or a registered ~~((animal))~~ veterinary technician, while under the veterinarian's direct supervision, certain nondiscretionary functions defined by the board and used in the dispensing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine. Upon final approval of the packaged prescription following a direct physical inspection of the packaged prescription for proper formulation, packaging, and labeling by the veterinarian, the veterinarian may delegate the delivery of the prescription to a registered veterinary medication clerk or registered ~~((animal))~~ veterinary technician, while under the veterinarian's indirect supervision. Dispensing of drugs by veterinarians, registered ~~((animal))~~ veterinary technicians, and registered veterinary medication clerks shall meet the applicable requirements of chapters 18.64, 69.40, 69.41, and 69.50 RCW and is subject to inspection by the board of pharmacy investigators.

(2) For the purposes of this section:

(a) "Direct supervision" means the veterinarian is on the premises and is quickly and easily available; and

(b) "Indirect supervision" means the veterinarian is not on the premises but has given written or oral instructions for the delegated task.

Sec. 9. RCW 18.92.015 and 1993 c 78 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"~~((Animal))~~ Veterinary technician" means a person who has successfully completed an examination administered by the board and who has either successfully completed a post high school course approved by the board in the care and treatment of animals or had five years' practical experience, acceptable to the board, with a licensed veterinarian.

"Board" means the Washington state veterinary board of governors.

"Department" means the department of health.

"Secretary" means the secretary of the department of health.

"Veterinary medication clerk" means a person who has satisfactorily completed a board-approved training program developed in consultation with the board of pharmacy and designed to prepare persons to perform certain nondiscretionary functions defined by the board and used in the dispensing of

legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine.

Sec. 10. RCW 18.92.030 and 1995 c 198 s 13 are each amended to read as follows:

The board shall 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))~~ veterinary 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))~~ veterinary 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. 11. RCW 18.92.060 and 1995 c 317 s 2 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))~~ A veterinary technician or veterinary medication clerk acting under the supervision and control of a licensed veterinarian. The practice of ~~((an animal))~~ a veterinary 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.

Sec. 12. RCW 18.92.125 and 1993 c 78 s 5 are each amended to read as follows:

No veterinarian who uses the services of ~~((an animal))~~ a veterinary technician or veterinary medication clerk shall be considered as aiding and abetting any unlicensed person to practice veterinary medicine. A veterinarian retains professional and personal responsibility for any act which constitutes the practice of veterinary medicine as defined in this chapter when performed by ~~((an animal))~~ a veterinary technician or veterinary medication clerk in his or her employ.

Sec. 13. RCW 18.92.140 and 1996 c 191 s 79 are each amended to read as follows:

Each person now qualified to practice veterinary medicine, surgery, and dentistry, registered as ~~((an animal))~~ a veterinary technician, or registered as a veterinary medication clerk in this state or who becomes licensed or registered to engage in practice shall comply with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

Sec. 14. RCW 18.92.145 and 1996 c 191 s 80 are each amended to read as follows:

Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280 for the issuance, renewal, or administration of the following licenses, certificates of registration, permits, duplicate licenses, renewals, or examination:

(1) For a license to practice veterinary medicine, surgery, and dentistry issued upon an examination given by the examining board;

(2) For a license to practice veterinary medicine, surgery, and dentistry issued upon the basis of a license issued in another state;

(3) For a certificate of registration as ~~((an animal))~~ a veterinary technician;

(4) For a certificate of registration as a veterinary medication clerk;

(5) For a temporary permit to practice veterinary medicine, surgery, and dentistry. The temporary permit fee shall be accompanied by the full amount of the examination fee; and

(6) For a license to practice specialized veterinary medicine.

Sec. 15. RCW 18.120.020 and 1997 c 334 s 13 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; denturism under chapter 18.30 RCW; dispensing opticians under chapter 18.34 RCW; hearing instruments 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; 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 licensed under chapter 18.89 RCW; veterinarians and ~~((animal))~~ veterinary technicians under chapter 18.92 RCW; health care assistants under chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW; acupuncturists 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 18.73.030 and 1990 c 269 s 23 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as used in this chapter shall have the meanings indicated.

(1) "Secretary" means the secretary of the department of health.

(2) "Department" means the department of health.

(3) "Committee" means the emergency medical services licensing and certification advisory committee.

(4) "Ambulance" means a ground or air vehicle designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat patients before and during transportation.

(5) "Aid vehicle" means a vehicle used to carry aid equipment and individuals trained in first aid or emergency medical procedure.

(6) "Emergency medical technician" means a person who is authorized by the secretary to render emergency medical care pursuant to RCW 18.73.081.

~~(7) ("Ambulance operator" means a person who owns one or more ambulances and operates them as a private business.~~

~~—(8) "Ambulance director" means a person who is a director of a service which operates one or more ambulances provided by a volunteer organization or governmental agency.~~

~~—(9) "Aid vehicle operator" means a person who owns one or more aid vehicles and operates them as a private business.~~

~~—(10) "Aid director" means a person who is a director of a service which operates one or more aid vehicles provided by a volunteer organization or governmental agency.~~

~~—(11)) "Ambulance service" means an organization that operates one or more ambulances.~~

(8) "Aid service" means an organization that operates one or more aid vehicles.

(9) "Emergency medical service" means medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

~~((12))~~ (10) "Communications system" means a radio and landline network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

~~((13))~~ (11) "Prehospital patient care protocols" means the written procedure adopted by the emergency medical services medical program director which direct the out-of-hospital emergency care of the emergency patient which includes the trauma care patient. These procedures shall be based upon the assessment of the patient's medical needs and what treatment will be provided for emergency conditions. The protocols shall meet or exceed state-wide minimum standards developed by the department in rule as authorized in chapter 70.168 RCW.

~~((14))~~ (12) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with the local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with state-wide minimum standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures in chapter 70.170 RCW.

~~((15))~~ (13) "Emergency medical services medical program director" means a person who is an approved medical program director as defined by RCW 18.71.205(4).

~~((16))~~ (14) "Council" means the local or regional emergency medical services and trauma care council as authorized under chapter 70.168 RCW.

~~((17))~~ (15) "Basic life support" means noninvasive emergency medical services requiring basic medical treatment skills as defined in chapter 18.73 RCW.

~~((18))~~ (16) "Advanced life support" means invasive emergency medical services requiring advanced medical treatment skills as defined by chapter 18.71 RCW.

~~((19))~~ (17) "First responder" means a person who is authorized by the secretary to render emergency medical care as defined by RCW 18.73.081.

Sec. 17. RCW 18.73.101 and 1987 c 214 s 9 are each amended to read as follows:

The secretary may grant a variance from a provision of this chapter and RCW 18.71.200 through 18.71.220 if no detriment to health and safety would result from the variance and compliance is expected to cause reduction or loss of existing emergency medical services. Variances may be granted for a period of no more than one year. A variance may be renewed by the secretary upon approval of the committee.

Sec. 18. RCW 18.73.130 and 1992 c 128 s 2 are each amended to read as follows:

An ambulance (~~operator, ambulance director, aid vehicle operator or aid director~~) service or aid service may not operate (~~(a service)~~) in the state of Washington without holding a license for such operation, issued by the secretary when such operation is consistent with the state-wide and regional emergency medical services and trauma care plans established pursuant to chapter 70.168 RCW, indicating the general area to be served and the number of vehicles to be used, with the following exceptions:

- (1) The United States government;
- (2) Ambulance (~~operators and ambulance directors~~) services providing service in other states when bringing patients into this state;
- (3) Owners of businesses in which ambulance or aid vehicles are used exclusively on company property but occasionally in emergencies may transport patients to hospitals not on company property; and
- (4) Operators of vehicles pressed into service for transportation of patients in emergencies when licensed ambulances are not available or cannot meet overwhelming demand.

The license shall be valid for a period of two years and shall be renewed on request provided the holder has consistently complied with the regulations of the department and the department of licensing and provided also that the needs of the area served have been met satisfactorily. The license shall not be transferable and may be revoked if the service is found in violation of rules adopted by the department.

Sec. 19. RCW 18.73.140 and 1992 c 128 s 3 are each amended to read as follows:

The secretary shall issue an ambulance or aid vehicle license for each vehicle so designated. The license shall be for a period of two years and may be reissued on expiration if the vehicle and its equipment meet requirements in force at the time of expiration of the license period. The license may be revoked if the ambulance or aid vehicle is found to be operating in violation of the regulations promulgated by the department or without required equipment. The license shall be terminated automatically if the vehicle is sold or transferred to the control of ~~((anyone))~~ any organization not currently licensed as an ambulance or aid vehicle ~~((operator or director))~~ service. The license number shall be prominently displayed on each vehicle.

Sec. 20. RCW 70.168.020 and 1990 c 269 s 5 are each amended to read as follows:

(1) There is hereby created an emergency medical services and trauma care steering committee composed of representatives of individuals knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, emergency medical technicians, paramedics, ambulance ~~((operators))~~ services, a member of the emergency medical services licensing and certification advisory committee, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The governor shall appoint members of the steering committee. Members shall be appointed for a period of three years. The department shall provide administrative support to the committee. All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060. The governor may remove members from the committee who have three unexcused absences from committee meetings. The governor shall fill any vacancies of the committee in a timely manner. The terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chair and a vice-chair whose terms of office shall be for one year each. The chair shall be ineligible for reelection after serving four consecutive terms.

The committee shall meet on call by the governor, the secretary, or the chair.

(2) The emergency medical services and trauma care steering committee shall:

(a) Advise the department regarding emergency medical services and trauma care needs throughout the state.

(b) Review the regional emergency medical services and trauma care plans and recommend changes to the department before the department adopts the plans.

(c) Review proposed departmental rules for emergency medical services and trauma care.

(d) Recommend modifications in rules regarding emergency medical services and trauma care.

Sec. 21. RCW 71.12.455 and 1977 ex.s. c 80 s 43 are each amended to read as follows:

As used in this chapter, "establishment" and "institution" mean and include every private hospital, sanitarium, home, or other place receiving or caring for any mentally ill, ~~((or))~~ mentally incompetent person, or ~~((alcoholic))~~ chemically dependent person.

Sec. 22. RCW 71.12.460 and 1989 1st ex.s. c 9 s 226 are each amended to read as follows:

No person, association, or corporation, shall establish or keep, for compensation or hire, an establishment as defined in this chapter without first having obtained a license therefor from the department of health, complied with rules adopted under this chapter, and ~~((having))~~ paid the license fee provided in this chapter. Any person who carries on, conducts, or attempts to carry on or conduct an establishment as defined in this chapter without first having obtained a license from the department of health, as in this chapter provided, is guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this chapter shall be liable under the provisions of this chapter in the same manner and to the same effect as a private individual violating the same.

Sec. 23. RCW 71.12.470 and 1987 c 75 s 19 are each amended to read as follows:

Every application for a license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the department of health requires. The application shall be accompanied by the proper license fee. The amount of the license fee shall be established by the department of health under RCW ~~((43.20B.110))~~ 43.70.110.

Sec. 24. RCW 71.12.480 and 1989 1st ex.s. c 9 s 227 are each amended to read as follows:

The department of health shall not grant any such license until it has made an examination of all phases of the operation of the establishment necessary to determine compliance with rules adopted under this chapter including the premises proposed to be licensed and is satisfied that ~~((they))~~ the premises are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted.

Sec. 25. RCW 71.12.500 and 1989 1st ex.s. c 9 s 230 and 1989 c 175 s 137 are each reenacted and amended to read as follows:

The department of health may at any time examine and ascertain how far a licensed establishment is conducted in compliance with this chapter, the rules adopted under this chapter, and the requirements of the license therefor. If the interests of the patients of the establishment so demand, the department may, for

just and reasonable cause, suspend, modify, or revoke any such license. RCW ((43.20A.205)) 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 26. RCW 71.12.510 and 1959 c 25 s 71.12.510 are each amended to read as follows:

The department of health may at any time cause any establishment as defined in this chapter to be visited and examined.

Sec. 27. RCW 71.12.520 and 1989 1st ex.s. c 9 s 231 are each amended to read as follows:

Each such visit may include an inspection of every part of each establishment. The representatives of the department of health may make an examination of all records, methods of administration, the general and special dietary, the stores and methods of supply, and may cause an examination and diagnosis to be made of any person confined therein. The representatives of the department of health may examine to determine their fitness for their duties the officers, attendants, and other employees, and may talk with any of the patients apart from the officers and attendants.

NEW SECTION. Sec. 28. A new section is added to chapter 71.12 RCW to read as follows:

The department of health shall adopt rules for the licensing, operation, and inspections of establishments and institutions and the enforcement thereof.

Sec. 29. RCW 18.46.005 and 1951 c 168 s 1 are each amended to read as follows:

The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of ((maternity homes)) birthing centers, which, in the light of advancing knowledge, will promote safe and adequate care and treatment of the individuals therein.

Sec. 30. RCW 18.46.010 and 1991 c 3 s 100 are each amended to read as follows:

(1) ((“Maternity home”)) “Birthing center” or “childbirth center” means any ((home, place, hospital or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery)) health facility, not part of a hospital or in a hospital, that provides facilities and staff to support a birth service to low-risk maternity clients: PROVIDED, HOWEVER, That this chapter shall not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association, or its successor.

(2) ((“Person” means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

—(3)) “Department” means the state department of health.

(3) "Low-risk" means normal, uncomplicated prenatal course as determined by adequate prenatal care and prospects for a normal uncomplicated birth as defined by reasonable and generally accepted criteria of maternal and fetal health.

(4) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

Sec. 31. RCW 18.46.020 and 1951 c 168 s 3 are each amended to read as follows:

After July 1, 1951, no person shall operate a ~~((maternity-home))~~ birthing center in this state without a license under this chapter.

Sec. 32. RCW 18.46.040 and 1987 c 75 s 5 are each amended to read as follows:

Upon receipt of an application for a license and the license fee, the licensing agency shall issue a license if the applicant and the ~~((maternity-home-facilities))~~ birthing center meet the requirements established under this chapter. A license, unless suspended or revoked, shall be renewable annually. Applications for renewal shall be on forms provided by the department and shall be filed in the department not less than ten days prior to its expiration. Each application for renewal shall be accompanied by a license fee as established by the department under RCW 43.20B.110. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

Sec. 33. RCW 18.46.060 and 1985 c 213 s 10 are each amended to read as follows:

The department, after consultation with representatives of ~~((maternity-home))~~ birthing center operators, state medical association, Washington Osteopathic Association, state nurses association, state hospital association, state midwives association, and any other representatives as the department may deem necessary, shall adopt, amend, and promulgate such rules and regulations with respect to all ~~((maternity-homes))~~ birthing centers in the promotion of safe and adequate medical and nursing care ~~((of inmates))~~ in the ~~((maternity-home))~~ birthing center and the sanitary, hygienic, and safe condition of the ~~((maternity-home))~~ birthing center in the interest of the health, safety, and welfare of the people.

Sec. 34. RCW 18.46.070 and 1951 c 168 s 8 are each amended to read as follows:

Any ~~((maternity-home))~~ birthing center which is in operation at the time of promulgation of any applicable rules or regulations under this chapter shall be given a reasonable time, under the particular circumstances, not to exceed three months from the date of such promulgation, to comply with the rules and regulations established under this chapter.

Sec. 35. RCW 18.46.080 and 1951 c 168 s 9 are each amended to read as follows:

The department shall make or cause to be made an inspection and investigation of all ~~((maternity-homes))~~ birthing centers, and every inspection may include an inspection of every part of the premises. The department may make an examination of all records, methods of administration, the general and special dietary and the stores and methods of supply. The ~~((board))~~ department may prescribe by regulation that any licensee or applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alterations, addition, or new construction submit plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with regulations and standards herein authorized. Necessary conferences and consultations may be provided.

Sec. 36. RCW 18.46.090 and 1951 c 168 s 10 are each amended to read as follows:

All information received by the department through filed reports, inspection, or as otherwise authorized under this chapter shall not be disclosed publicly in any manner as to identify individuals or ~~((maternity-homes))~~ birthing centers except in a proceeding involving the question of licensure.

Sec. 37. RCW 18.46.110 and 1995 c 369 s 5 are each amended to read as follows:

Fire protection with respect to all ~~((maternity-homes))~~ birthing centers to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt by reference, such recognized standards as may be applicable to nursing homes, places of refuge, and ~~((maternity-homes))~~ birthing centers for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the chief of the Washington state patrol, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the ~~((maternity-home))~~ birthing center to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the department as to the manner in which the premises may qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any requirements made by him or her, and the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the ~~((maternity home))~~ birthing center to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall

submit to the department, a written report approving same with respect to fire protection before a license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made such inspection of such ~~((maternity-homes))~~ birthing centers as he or she deems necessary.

In cities which have in force a comprehensive building code, the regulation of which is equal to the minimum standards of the code for ~~((maternity-homes))~~ birthing centers adopted by the chief of the Washington state patrol, through the director of fire protection, the building inspector and the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection and shall approve the premises before a license can be issued.

In cities where such building codes are in force, the chief of the Washington state patrol, through the director of fire protection, may, upon request by the chief fire official, or the local governing body, or of a taxpayer of such city, assist in the enforcement of any such code pertaining to ~~((maternity-homes))~~ birthing centers.

Sec. 38. RCW 18.46.120 and 1951 c 168 s 13 are each amended to read as follows:

Any person operating or maintaining any ~~((maternity-home))~~ birthing center without a license under this chapter shall be guilty of a misdemeanor. Each day of a continuing violation after conviction shall be considered a separate offense.

Sec. 39. RCW 18.46.130 and 1951 c 168 s 14 are each amended to read as follows:

Notwithstanding the existence or use of any other remedy, the department may in the manner provided by law, upon the advice of the attorney general who shall represent the department in all proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the operation or maintenance of a ~~((maternity-home))~~ birthing center not licensed under this chapter.

Sec. 40. RCW 18.46.140 and 1951 c 168 s 15 are each amended to read as follows:

Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial and nursing care of ~~((residents or))~~ patients in any ~~((maternity-home))~~ birthing center as defined in this chapter, conducted for or by members of a recognized religious sect, denomination, or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such ~~((home or institution))~~ facility.

Sec. 41. RCW 18.57A.070 and 1977 ex.s. c 233 s 1 are each amended to read as follows:

~~((1) The performance of acupuncture for the purpose of demonstration, therapy, or the induction of analgesia by a person licensed under this chapter shall~~

~~be within the scope of practice authorized: PROVIDED, HOWEVER, That a person licensed to perform acupuncture under this section shall only do so under the direct supervision of a licensed osteopathic physician:~~

~~—(2) The board shall determine the qualifications of a person authorized to perform acupuncture under subsection (1) of this section. In establishing a procedure for certification of such practitioners the board shall consider a license or certificate which acknowledges that the person has the qualifications to practice acupuncture issued by the government of the Republic of China (Taiwan), the Peoples' Republic of China, British Crown Colony of Hong Kong, Korea, Great Britain, France, the Federated Republic of Germany (West Germany), Italy, Japan, or any other country or state which has generally equivalent standards of practices of acupuncture as determined by the board as evidence of such qualification.~~

~~—(3) As used in this section "acupuncture" means the insertion of needles into the human body by piercing the skin of the body for the purpose of relieving pain; treating disease, or to produce analgesia, or as further defined by rules and regulations of the board:)) Any physician assistant acupuncturist currently licensed as a physician assistant may continue to perform acupuncture under the physician assistant license as long as he or she maintains licensure as a physician assistant.~~

Sec. 42. RCW 18.84.020 and 1994 sp.s. c 9 s 505 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 health.

(2) "Secretary" means the secretary of health.

(3) "Licensed practitioner" means any licensed health care practitioner performing services within the person's authorized scope of practice.

(4) "Radiologic technologist" means an individual certified under this chapter, other than a licensed practitioner, who practices radiologic technology as a:

(a) Diagnostic radiologic technologist, who is a person who actually handles x-ray equipment in the process of applying radiation on a human being for diagnostic purposes at the direction of a licensed practitioner, this includes parenteral procedures related to radiologic technology when performed under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW; or

(b) Therapeutic radiologic technologist, who is a person who uses radiation-generating equipment for therapeutic purposes on human subjects at the direction of a licensed practitioner, this includes parenteral procedures related to radiologic technology when performed under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW; or

(c) Nuclear medicine technologist, who is a person who prepares radiopharmaceuticals and administers them to human beings for diagnostic and therapeutic purposes and who performs in vivo and in vitro detection and measurement of radioactivity for medical purposes at the direction of a licensed practitioner.

(5) "Approved school of radiologic technology" means a school of radiologic technology approved by the council on medical education of the American medical association or a school found to maintain the equivalent of such a course of study as determined by the department. Such school may be operated by a medical or educational institution, and for the purpose of providing the requisite clinical experience, shall be affiliated with one or more general hospitals.

(6) "Radiologic technology" means the use of ionizing radiation upon a human being for diagnostic or therapeutic purposes.

(7) "Radiologist" means a physician certified by the American board of radiology or the American osteopathic board of radiology.

(8) "Registered x-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner and who does not perform parenteral procedures.

Sec. 43. RCW 18.89.140 and 1997 c 334 s 11 are each amended to read as follows:

Licenses shall be renewed according to administrative procedures, administrative requirements, continuing education requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280. A minimum of thirty hours of continuing education approved by the secretary must be completed every two years to meet the continuing education requirements under this section.

NEW SECTION. **Sec. 44.** The following acts or parts of acts are each repealed:

(1) RCW 18.48.040 (Multiple facility operators—Registration) and 1996 c 81 s 3;

(2) RCW 18.83.910 (Examining board—Termination) and 1994 c 35 s 6, 1990 c 297 s 7, 1988 c 288 s 8, 1986 c 27 s 11, 1985 c 7 s 109, & 1984 c 279 s 94; and

(3) RCW 18.83.911 (Examining board—Repeal) and 1994 c 35 s 7 & 1990 c 297 s 8.

NEW SECTION. **Sec. 45.** Sections 1 and 3 of this act expire January 1, 2003.

NEW SECTION. **Sec. 46.** Sections 2 and 4 of this act take effect January 1, 2003.

Passed the House March 6, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 94

[House Bill 2520]

MENTAL HOSPITAL PATIENTS—TERMINOLOGY

AN ACT Relating to consistent use of terms regarding state hospital patient status; amending RCW 71.05.020, 71.05.025, 71.05.050, 71.05.120, 71.05.170, 71.05.210, 71.05.325, 71.05.340,

71.05.390, 71.05.425, 71.05.640, 10.77.025, 10.77.110, 10.77.120, 10.77.200, 10.77.205, and 49.19.010; and reenacting and amending RCW 10.77.010.

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

Sec. 1. RCW 71.05.020 and 1999 c 13 s 5 are each amended to read as follows:

~~((For the purposes of))~~ The definitions in this section apply throughout this chapter(;) unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

~~((2))~~ (3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

~~((3))~~ (4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "County designated mental health professional" means a mental health professional appointed by the county to perform the duties specified in this chapter;

~~((4))~~ (7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

~~((5))~~ (8) "Department" means the department of social and health services;

~~((6))~~ (9) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(10) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

~~((7))~~ (11) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

~~((8))~~ (12) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(13) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility

which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

~~((9))~~ (14) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

~~((10))~~ (15) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct;

~~((11))~~ (16) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

~~((12))~~ (17) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge ~~((from involuntary confinement))~~ or release, and a projected possible date for discharge ~~((from involuntary confinement))~~ or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

~~((13))~~ (18) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

~~((14))~~ (19) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts;

~~((15))~~ (20) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

~~((16))~~ (21) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

~~((17))~~ (22) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

~~((18))~~ (23) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, hospital, or sanitarium, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

~~((19))~~ (24) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

~~((20))~~ (25) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

~~((21))~~ (26) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

~~((22))~~ (27) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill; if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

~~((23))~~ (28) "Release" means legal termination of the commitment under the provisions of this chapter;

~~(29)~~ "Resource management services" has the meaning given in chapter 71.24 RCW;

~~((24))~~ (30) "Secretary" means the secretary of the department of social and health services, or his or her designee;

~~((25))~~ (31) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

~~((26))~~ (32) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

Sec. 2. RCW 71.05.025 and 1989 c 205 s 9 are each amended to read as follows:

The legislature intends that the procedures and services authorized in this chapter be integrated with those in chapter 71.24 RCW to the maximum extent necessary to assure a continuum of care to persons who are mentally ill or who have mental disorders, as defined in either or both this chapter and chapter 71.24 RCW. To this end, regional support networks established in accordance with chapter 71.24 RCW shall institute procedures which require timely consultation with resource management services by county-designated mental health professionals and evaluation and treatment facilities to assure that determinations to admit, detain, commit, treat, discharge, or release persons with mental disorders under this chapter are made only after appropriate information regarding such person's treatment history and current treatment plan has been sought from resource management services.

Sec. 3. RCW 71.05.050 and 1998 c 297 s 6 are each amended to read as follows:

Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall be released immediately upon his or her request. Any person voluntarily admitted for inpatient treatment to any public or private agency shall orally be advised of the right to immediate ~~((release))~~ discharge, and further advised of such rights in writing as are secured to them pursuant to this chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment ~~((and/or))~~ or possible ~~((release))~~ discharge, at which time they shall again be advised of their right to ~~((release))~~ discharge upon request: PROVIDED HOWEVER, That if the professional staff of any public or private agency or hospital regards a person voluntarily admitted who requests ~~((release))~~ discharge as presenting, as a result of a mental disorder, an imminent likelihood of serious harm, or is gravely disabled, they may detain such person for sufficient time to notify the county designated mental health professional of such person's condition to enable the county designated mental health professional to authorize such person

being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day: PROVIDED FURTHER, That if a person is brought to the emergency room of a public or private agency or hospital for observation or treatment, the person refuses voluntary admission, and the professional staff of the public or private agency or hospital regard such person as presenting as a result of a mental disorder an imminent likelihood of serious harm, or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the county designated mental health professional of such person's condition to enable the county designated mental health professional to authorize such person being further held in custody or transported to an evaluation treatment center pursuant to the conditions in this chapter, but which time shall be no more than six hours from the time the professional staff determine that an evaluation by the county designated mental health professional is necessary.

Sec. 4. RCW 71.05.120 and 1991 c 105 s 2 are each amended to read as follows:

(1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, discharge, release, administer antipsychotic medications, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel.

Sec. 5. RCW 71.05.170 and 1998 c 297 s 10 are each amended to read as follows:

Whenever the county designated mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit, detain,

~~transfer~~, or ~~((release)) discharge~~ such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the county designated mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention.

The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW.

Sec. 6. RCW 71.05.210 and 1998 c 297 s 12 are each amended to read as follows:

Each person involuntarily ~~((admitted-to))~~ detained and accepted or admitted at an evaluation and treatment facility shall, within twenty-four hours of his or her admission or acceptance at the facility, be examined and evaluated by a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW or an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.370, the individual may refuse psychiatric medications, but may not refuse: (1) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (2) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in a chemical dependency treatment facility, then the person shall be referred to an approved treatment program defined under RCW 70.96A.020.

An evaluation and treatment center admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the county designated mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days.

Sec. 7. RCW 71.05.325 and 1994 c 129 s 8 are each amended to read as follows:

(1) Before a person committed under grounds set forth in RCW 71.05.280(3) is released ~~((from involuntary treatment))~~ because a new petition for involuntary

treatment has not been filed under RCW 71.05.320(2), the superintendent, professional person, or designated mental health professional responsible for the decision whether to file a new petition shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision not to file a new petition for involuntary treatment. Notice shall be provided at least forty-five days before the period of commitment expires.

(2)(a) Before a person committed under grounds set forth in RCW 71.05.280(3) is permitted temporarily to leave a treatment facility pursuant to RCW 71.05.270 for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county ~~((to which the person is to be released))~~ of the person's destination and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed ~~((of the decision conditionally to release the person))~~. The notice shall be provided at least forty-five days before the anticipated ~~((release))~~ leave and shall describe the conditions under which the ~~((release))~~ leave is to occur.

(b) The provisions of RCW 71.05.330(2) apply to proposed ~~((temporary releases))~~ leaves, and either or both prosecuting attorneys receiving notice under this subsection may petition the court under RCW 71.05.330(2).

(3) Nothing in this section shall be construed to authorize detention of a person unless a valid order of commitment is in effect.

(4) The existence of the notice requirements in this section will not require any extension of the ~~((release))~~ leave date in the event the ~~((release))~~ leave plan changes after notification.

(5) The notice requirements contained in this section shall not apply to emergency medical ~~((furloughs))~~ transfers.

(6) The notice provisions of this section are in addition to those provided in RCW 71.05.425.

Sec. 8. RCW 71.05.340 and 1998 c 297 s 21 are each amended to read as follows:

(1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a ~~((condition for early))~~ term of conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the ~~((conditions for early))~~ terms of conditional release shall be given to the patient, the county

designated mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the ~~((conditions for early))~~ terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3)(a) If the hospital or facility designated to provide outpatient care, the county designated mental health professional, or the secretary determines that:

(i) A conditionally released person is failing to adhere to the terms and conditions of his or her release;

(ii) Substantial deterioration in a conditionally released person's functioning has occurred;

(iii) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or

(iv) The person poses a likelihood of serious harm.

Upon notification by the hospital or facility designated to provide outpatient care, or on his or her own motion, the county designated mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(b) The hospital or facility designated to provide outpatient treatment shall notify the secretary or county designated mental health professional when a conditionally released person fails to adhere to terms and conditions of his or her conditional release or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm. The county designated mental health professional or secretary shall order the person apprehended and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(c) A person detained under this subsection (3) shall be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been conditionally released. The county designated mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing.

(d) The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the county designated mental health professional or the secretary shall file his or her petition and order of apprehension and detention with the court and serve them upon the person detained. His or her attorney, if any, and his or her guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The issues to be determined shall be: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her conditional release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)(d) have occurred, whether the ~~((conditions of))~~ terms of conditional release should be modified or the person should be returned to the facility.

(e) Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on

an inpatient basis subject to release at the end of the period for which he or she was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his or her counsel and his or her guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the county designated mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than five days from the date of service of the petition upon the conditionally released person.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order.

Sec. 9. RCW 71.05.390 and 1999 c 12 s 1 are each amended to read as follows:

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter 71.24 RCW; (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: **PROVIDED**, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ "

(6) To the courts as necessary to the administration of this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary ((admission)) commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as

to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(12) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(13) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(14) To the department of health of the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or

his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

Sec. 10. RCW 71.05.425 and 1999 c 13 s 8 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final ~~((discharge))~~ release, authorized leave under RCW 71.05.325(2), or transfer to a ~~((less-restrictive))~~ facility other than a state mental hospital, the superintendent shall send written notice of conditional release, ~~((final-discharge))~~ release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside; and
(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; 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 person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical ~~((furloughs))~~ transfers.

(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) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) escapes, the superintendent 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 person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW

71.05.280(3) or 71.05.320(2) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.410. If the person is recaptured, the superintendent 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.

(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 parent or legal guardian of the child.

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

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

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

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

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

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

Sec. 11. RCW 71.05.640 and 1999 c 13 s 9 are each amended to read as follows:

(1) Procedures shall be established by resource management services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

(2) Following discharge, the individual shall have a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge all individuals shall be informed by resource management services of their rights as provided in RCW 71.05.610 through 71.05.690.

Sec. 12. RCW 10.77.010 and 1999 c 143 s 49 and 1999 c 13 s 2 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(4) "County designated mental health professional" has the same meaning as provided in RCW 71.05.020.

~~((2))~~ (5) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

~~((3))~~ (6) "Department" means the state department of social and health services.

~~((4))~~ (7) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(8) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

~~((5))~~ (9) "Developmental disability" means the condition as defined in RCW 71A.10.020(3).

~~((6))~~ (10) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(11) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

~~((7))~~ (12) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct.

~~((8))~~ (13) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

~~((9))~~ (14) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

~~((10))~~ (15) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

~~((11))~~ (16) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual ~~((discharge from involuntary confinement))~~ release, and a projected possible date for ~~((discharge from involuntary confinement))~~ release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

~~((12))~~ (17) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW;
or

(c) A social worker with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

~~((13))~~ (18) "Release" means legal termination of the court ordered commitment under the provisions of this chapter.

(19) "Secretary" means the secretary of the department of social and health services or his or her designee.

~~((14))~~ (20) "Treatment" means any currently standardized medical or mental health procedure including medication.

~~((+5))~~ (21) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person.

Sec. 13. RCW 10.77.025 and 1998 c 297 s 31 are each amended to read as follows:

(1) Whenever any person has been: (a) Committed to a correctional facility or inpatient treatment under any provision of this chapter; or (b) ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was committed, or was acquitted by reason of insanity.

(2) Whenever any person committed under any provision of this chapter has not been ~~((finally discharged))~~ released within seven days of the maximum possible penal sentence under subsection (1) of this section, and the professional person in charge of the facility believes ~~((it more likely than not that the person will not be finally discharged))~~ that the person presents a likelihood of serious harm or is gravely disabled due to a mental disorder, the professional person shall, prior to the ~~((person's release from the facility))~~ expiration of the maximum penal sentence, notify the appropriate county designated mental health professional of the impending ~~((release))~~ expiration and provide a copy of all relevant information regarding the person, including the likely release date and shall indicate why ~~((final discharge was not made))~~ the person should not be released.

(3) A county designated mental health professional who receives notice and records under subsection (2) of this section shall, prior to the date of ~~((probable release))~~ the expiration of the maximum sentence, determine whether to initiate proceedings under chapter 71.05 RCW.

Sec. 14. RCW 10.77.110 and 1998 c 297 s 39 are each amended to read as follows:

(1) If a defendant is acquitted of a crime by reason of insanity, and it is found that he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct the defendant's ~~((final discharge))~~ release. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

(2) If the defendant has been found not guilty by reason of insanity and a substantial danger, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, so as to require treatment then the secretary shall immediately cause the defendant to be evaluated to ascertain if the defendant is developmentally disabled. When appropriate, and subject to available funds, the defendant may be committed to a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services according to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The treatment program shall provide physical security to a degree consistent with the finding that the defendant is dangerous and may incorporate varying conditions of security and alternative sites when the dangerousness of any particular defendant makes this necessary. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

(3) If it is found that such defendant is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, but that he or she is in need of control by the court or other persons or institutions, the court shall direct the defendant's conditional release.

See. 15. RCW 10.77.120 and 1989 c 420 s 7 are each amended to read as follows:

The secretary shall forthwith provide adequate care and individualized treatment at one or several of the state institutions or facilities under his or her direction and control wherein persons committed as criminally insane may be confined. Such persons shall be under the custody and control of the secretary to the same extent as are other persons who are committed to the secretary's custody, but such provision shall be made for their control, care, and treatment as is proper in view of their condition. In order that the secretary may adequately determine the nature of the mental illness or developmental disability of the person committed to him or her as criminally insane, and in order for the secretary to place such individuals in a proper facility, all persons who are committed to the secretary as criminally insane shall be promptly examined by qualified personnel in such a manner as to provide a proper evaluation and diagnosis of such individual. The examinations of all developmentally disabled persons committed under this chapter shall be performed by developmental disabilities professionals. Any person so committed shall not be (~~discharged~~) released from the control of the secretary

save upon the order of a court of competent jurisdiction made after a hearing and judgment of ~~((discharge))~~ release.

Whenever there is a hearing which the committed person is entitled to attend, the secretary shall send him or her in the custody of one or more department employees to the county where the hearing is to be held at the time the case is called for trial. During the time the person is absent from the facility, he or she shall be confined in a facility designated by and arranged for by the department, and shall at all times be deemed to be in the custody of the department employee and provided necessary treatment. If the decision of the hearing remits the person to custody, the department employee shall forthwith return the person to such institution or facility designated by the secretary. If the state appeals an order of ~~((discharge))~~ release, such appeal shall operate as a stay, and the person in custody shall so remain and be forthwith returned to the institution or facility designated by the secretary until a final decision has been rendered in the cause.

Sec. 16. RCW 10.77.200 and 1998 c 297 s 44 are each amended to read as follows:

(1) Upon application by the committed or conditionally released person, the secretary shall determine whether or not reasonable grounds exist for ~~((final discharge))~~ release. In making this determination, the secretary may consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case. If the secretary approves the ~~((final-discharge))~~ release he or she then shall authorize the person to petition the court.

(2) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for ~~((final-discharge))~~ release, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the prosecuting attorney's choice. If the petitioner is indigent, and the person so requests, the court shall appoint a qualified expert or professional person to examine him or her. If the petitioner is developmentally disabled, the examination shall be performed by a developmental disabilities professional. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the petitioner no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(3) Nothing contained in this chapter shall prohibit the patient from petitioning the court for ~~((final-discharge))~~ release or conditional release from the institution in which he or she is committed. The issue to be determined on such proceeding is whether the petitioner, as a result of a mental disease or defect, is a substantial

danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus.

Sec. 17. RCW 10.77.205 and 1994 c 129 s 5 are each amended to read as follows:

(1)(a) At the earliest possible date, and in no event later than thirty days before conditional release, (~~final discharge~~) release, authorized furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of the conditional release, (~~final discharge~~) release, authorized furlough, or transfer of a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is now in the custody of the department pursuant to this chapter, to the following:

- (i) The chief of police of the city, if any, in which the person will reside; and
- (ii) The sheriff of the county in which the person will reside.

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

- (i) The victim of the crime for which the person was committed or the victim's next of kin if the crime was a homicide;
- (ii) Any witnesses who testified against the person in any court proceedings; 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 person committed under this chapter.

(c) In addition to the notice requirements of (a) and (b) of this subsection, the superintendent shall comply with RCW 10.77.163.

(d) The thirty-day notice requirement contained in (a) and (b) of this subsection shall not apply to emergency medical furloughs.

(e) The existence of the notice requirements in (a) and (b) of this subsection shall not require any extension of the release date in the event the release plan changes after notification.

(2) If a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is committed under this chapter escapes, the superintendent 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 person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim, if any, of the crime for which the person was committed or the victim's next

of kin if the crime was a homicide. The superintendent shall also notify appropriate persons pursuant to RCW 10.77.165. If the person 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.

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

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

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

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

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

(d) "Authorized furlough" means a furlough granted after compliance with RCW 10.77.163;

(e) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

Sec. 18. RCW 49.19.010 and 1999 c 377 s 2 are each amended to read as follows:

For purposes of this chapter:

(1) "Health care setting" means:

(a) Hospitals as defined in RCW 70.41.020;

(b) Home health, hospice, and home care agencies under chapter 70.127 RCW, subject to RCW 49.19.070;

(c) Evaluation and treatment facilities as defined in RCW 71.05.020(~~((8))~~) (12); and

(d) Community mental health programs as defined in RCW 71.24.025(~~((8))~~) (5).

(2) "Department" means the department of labor and industries.

(3) "Employee" means an employee as defined in RCW 49.17.020.

(4) "Violence" or "violent act" means any physical assault or verbal threat of physical assault against an employee of a health care setting.

Passed the House March 5, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 95

[Substitute House Bill 1218]

NURSE DELEGATION

AN ACT Relating to department of health recommendations for improving nurse delegation in community settings; amending RCW 18.88A.210, 18.88A.230, and 18.79.260; and repealing RCW 18.88A.220 and 18.88A.240.

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

Sec. 1. RCW 18.88A.210 and 1998 c 272 s 10 are each amended to read as follows:

(1) A ~~((nurse may delegate specific care tasks to))~~ nursing assistant(s) meeting the requirements of this section ~~((and))~~ who provides care to individuals in ~~((community residential programs for the developmentally disabled certified by the department of social and health services under chapter 71A.12 RCW, to individuals residing in adult family homes licensed under chapter 70.128 RCW, and to individuals residing in boarding homes licensed under chapter 18.20 RCW contracting with the department of social and health services to provide assisted living services pursuant to RCW 74.39A.010))~~ community-based care settings, as defined in RCW 18.79.260(3), may accept delegation of nursing care tasks by a registered nurse as provided in RCW 18.79.260(3).

(2) For the purposes of this section, "nursing assistant" means a nursing assistant-registered or a nursing assistant-certified. Nothing in this section may be construed to affect the authority of nurses to delegate nursing tasks to other persons, including licensed practical nurses, as authorized by law.

(3) Before commencing any specific nursing care tasks authorized under this chapter, the nursing assistant must (a) provide to the delegating nurse a certificate of completion issued by the department of social and health services indicating the completion of basic core nurse delegation training ~~((as provided in this section))~~, (b) be regulated by the department of health pursuant to this chapter, subject to the uniform disciplinary act under chapter 18.130 RCW, and (c) meet any additional training requirements identified by the nursing care quality assurance commission ~~((and authorized by this section))~~. Exceptions to these training requirements must adhere to RCW 18.79.260(3)(d)(iii).

~~(((4) A nurse may delegate the following care tasks:~~

- ~~—(a) Oral and topical medications and ointments;~~
- ~~—(b) Nose, ear, eye drops, and ointments;~~
- ~~—(c) Dressing changes and catheterization using clean techniques as defined by the nursing care quality assurance commission;~~
- ~~—(d) Suppositories, enemas, ostomy care;~~
- ~~—(e) Blood glucose monitoring;~~
- ~~—(f) Gastrostomy feedings in established and healed condition.~~

~~(5) On or before September 1, 1995, the nursing care quality assurance commission, in conjunction with the professional nursing organizations, shall develop rules for nurse delegation protocols and by December 5, 1995, identify~~

~~training beyond the core training that is deemed necessary for the delegation of complex tasks and patient care.~~

~~— (6) Nursing task delegation protocols are not intended to regulate the settings in which delegation may occur but are intended to ensure that nursing care services have a consistent standard of practice upon which the public and profession may rely and to safeguard the authority of the nurse to make independent professional decisions regarding the delegation of a task. Protocols shall include at least the following:~~

~~— (a) Ensure that determination of the appropriateness of delegation of a nursing task is at the discretion of the nurse;~~

~~— (b) Allow delegation of a nursing care task only for patients who have a stable and predictable condition. "Stable and predictable condition" means a situation, as defined by rule by the nursing care quality assurance commission, in which the patient's clinical and behavioral status is known and does not require frequent presence and evaluation of a registered nurse;~~

~~— (c) Assure that the initial delegating nurse obtains written consent to the nurse delegation process from the patient or a person authorized under RCW 7.70.065. Written consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse or nursing assistant will be participating in the process. The written consent must include at a minimum the following:~~

~~— (i) A list of the tasks that could potentially be delegated per RCW 18.88A.210; and~~

~~— (ii) A statement that a nursing assistant through the nurse delegation process will be performing a task that would previously have been performed by a registered or licensed practical nurse;~~

~~— (d) Verify that the nursing assistant has completed the core training;~~

~~— (e) Require assessment by the nurse of the ability and willingness of the nursing assistant to perform the delegated nursing task in the absence of direct nurse supervision and to refrain from delegation if the nursing assistant is not able or willing to perform the task;~~

~~— (f) Require the nurse to analyze the complexity of the nursing task that is considered for delegation and determine the appropriate level of training and any need of additional training for the nursing assistant;~~

~~— (g) Require the teaching of the nursing care task to the nursing assistant utilizing one or more of the following: (i) Verification of competency via return demonstration; (ii) other methods for verification of competency to perform the nursing task; or (iii) assurance that the nursing assistant is competent to perform the nursing task as a result of systems in place in the community residential program for the developmentally disabled, adult family home, or boarding home providing assisted living services;~~

~~— (h) Require a plan of nursing supervision and reevaluation of the delegated nursing task. "Nursing supervision" means that the registered nurse monitors by~~

~~direct observation or by whatever means is deemed appropriate by the registered nurse the skill and ability of the nursing assistant to perform delegated nursing tasks. Frequency of supervision is at the discretion of the registered nurse but shall occur at least every sixty days;~~

~~—(i) Require instruction to the nursing assistant that the delegated nursing task is specific to a patient and is not transferable;~~

~~—(j) Require documentation and written instruction related to the delegated nursing task be provided to the nursing assistant and a copy maintained in the patient record;~~

~~—(k) Ensure that the nursing assistant is prepared to effectively deal with the predictable outcomes of performing the nursing task;~~

~~—(l) Include in the delegation of tasks an awareness of the nature of the condition requiring treatment, risks of the treatment, side effects, and interaction of prescribed medications;~~

~~—(m) Require documentation in the patient's record of the rationale for delegating or not delegating nursing tasks.~~

~~—(7) A basic core training curriculum on providing care for individuals in community residential programs for the developmentally disabled certified by the department of social and health services under chapter 71A.12 RCW shall be in addition to the training requirements specified in subsection (5) of this section. Basic core training shall be developed and adopted by rule by the secretary of the department of social and health services. The department of social and health services shall appoint an advisory panel to assist in the development of core training comprised of representatives of the following:~~

~~—(a) The division of developmental disabilities;~~

~~—(b) The nursing care quality assurance commission;~~

~~—(c) Professional nursing organizations;~~

~~—(d) A state-wide organization of community residential service providers whose members are programs certified by the department under chapter 71A.12 RCW.~~

~~—(8) A basic core training curriculum on providing care to residents in residential settings licensed under chapter 70.128 RCW, or in assisted living pursuant to RCW 74.39A.010 shall be mandatory for nursing assistants prior to assessment by a nurse regarding the ability and willingness to perform a delegated nursing task. Core training shall be developed and adopted by rule by the secretary of the department of social and health services, in conjunction with an advisory panel. The advisory panel shall be comprised of representatives from, at a minimum, the following:~~

~~—(a) The nursing care quality assurance commission;~~

~~—(b) Professional nurse organizations;~~

~~—(c) A state-wide association of community residential service providers whose members are programs certified by the department under chapter 71A.12 RCW;~~

~~—(d) Aging consumer groups;~~

~~—(e) Associations representing homes licensed under chapters 70.128 and 18.20 RCW; and~~

~~—(f) Associations representing home health, hospice, and home care agencies licensed under chapter 70.127 RCW.)~~

Sec. 2. RCW 18.88A.230 and 1998 c 272 s 11 are each amended to read as follows:

(1) The ~~((nurse and))~~ nursing assistant shall be accountable for their own individual actions in the delegation process. ~~((Nurses acting within the protocols of their delegation authority shall be immune from liability for any action performed in the course of their delegation duties.))~~ Nursing assistants following written delegation instructions from registered nurses performed in the course of their accurately written, delegated duties shall be immune from liability.

(2) ~~((No person may coerce a nurse into compromising patient safety by requiring the nurse to delegate if the nurse determines it is inappropriate to do so. Nurses shall not be subject to any employer reprisal or disciplinary action by the Washington nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.))~~ Nursing assistants shall not be subject to any employer reprisal or disciplinary action by the ~~((nursing care quality assurance commission))~~ secretary for refusing to accept delegation of a nursing task based on patient safety issues. No ~~((community residential program, adult family home, or boarding home contracting to provide assisted living services))~~ community-based care setting as defined in RCW 18.79.260(3)(d) may discriminate or retaliate in any manner against a person because the person made a complaint or cooperated in the investigation of a complaint.

~~((3) The department of social and health services may impose a civil fine of not less than two hundred fifty dollars nor more than one thousand dollars on a community residential program, adult family home, or boarding home under chapter 18, Laws of 1995 1st sp. sess. that knowingly permits an employee to perform a nursing task except as delegated by a nurse pursuant to chapter 18, Laws of 1995 1st sp. sess.))~~

Sec. 3. RCW 18.79.260 and 1995 1st sp.s. c 18 s 51 are each amended to read as follows:

(1) 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 and 18.88A.210:))~~.

~~((+))~~ (2) A registered nurse may, 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 the functions outlined in subsection (1) of this section in accordance with chapter 18.88A RCW;))~~

(3) A registered nurse may delegate tasks of nursing care to other individuals where the registered nurse determines that it is in the best interest of the patient.

(a) The delegating nurse shall:

(i) Determine the competency of the individual to perform the tasks;

(ii) Evaluate the appropriateness of the delegation;

(iii) Supervise the actions of the person performing the delegated task; and

(iv) Delegate only those tasks that are within the registered nurse's scope of practice.

(b) A registered nurse may not delegate acts requiring substantial skill, the administration of medications, or piercing or severing of tissues except to registered or certified nursing assistants who provide care to individuals in community-based care settings as authorized under (d) of this subsection. Acts that require nursing judgment shall not be delegated.

(c) No person may coerce a nurse into compromising patient safety by requiring the nurse to delegate if the nurse determines that it is inappropriate to do so. Nurses shall not be subject to any employer reprisal or disciplinary action by the nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.

(d) For delegation in community-based care settings, a registered nurse may delegate nursing care tasks only to registered or certified nursing assistants. Simple care tasks such as blood pressure monitoring, personal care service, or other tasks as defined by the nursing care quality assurance commission are exempted from this requirement. "Community-based care settings" includes: Community residential programs for the developmentally disabled, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(i) Delegation of nursing care tasks in community-based care settings is only allowed for individuals who have a stable and predictable condition. "Stable and predictable condition" means a situation in which the individual's clinical and behavioral status is known and does not require the frequent presence and evaluation of a registered nurse.

(ii) The determination of the appropriateness of delegation of a nursing task is at the discretion of the registered nurse. However, the administration of

medications by injection, sterile procedures, and central line maintenance may never be delegated.

(iii) The registered nurse shall verify that the nursing assistant has completed the required core nurse delegation training required in chapter 18.88A RCW prior to authorizing delegation.

(iv) The nurse is accountable for his or her own individual actions in the delegation process. Nurses acting within the protocols of their delegation authority are immune from liability for any action performed in the course of their delegation duties.

(v) On or before June 30, 2001, the nursing care quality assurance commission, in conjunction with the professional nursing organizations and the department of social and health services, shall make any needed revisions or additions to nurse delegation protocols by rule, including standards for nurses to obtain informed consent prior to the delegation of nursing care tasks. Nursing task delegation protocols are not intended to regulate the settings in which delegation may occur, but are intended to ensure that nursing care services have a consistent standard of practice upon which the public and the profession may rely, and to safeguard the authority of the nurse to make independent professional decisions regarding the delegation of a task.

(e) The nursing care quality assurance commission may adopt rules to implement this section.

(4) Only a person licensed as a registered nurse may instruct nurses in technical subjects pertaining to nursing((:)).

((+)) (5) Only a person licensed as a registered nurse may hold herself or himself out to the public or designate herself or himself as a registered nurse.

NEW SECTION. Sec. 4. The following acts or parts of acts are each repealed:

- (1) RCW 18.88A.220 and 1995 1st sp.s. c 18 s 47; and
- (2) RCW 18.88A.240 and 1995 1st sp.s. c 18 s 49.

Passed the House March 5, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 96

[Substitute House Bill 2378]

STRUCTURAL PEST INSPECTIONS

AN ACT Relating to structural pest inspections; amending RCW 15.58.030, 15.58.150, 15.58.233, 15.58.040, and 15.58.210; adding new sections to chapter 15.58 RCW; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 15.58.030 and 1992 c 170 s 1 are each amended to read as follows:

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

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

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

(6) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(7) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(8) "Director" means the director of the department or a duly authorized representative.

(9) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(10) "EPA" means the United States environmental protection agency.

(11) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(12) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(13) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(14) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(15) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(16) "Inert ingredient" means an ingredient which is not an active ingredient.

(17) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in

the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. In the case of a spray adjuvant the ingredient statement need contain only the names of the principal functioning agents and the total percentage of the constituents ineffective as spray adjuvants. If more than three functioning agents are present, only the three principal ones need be named.

(18) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(19) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(20) "Inspection control number" means a number obtained from the department that is recorded on wood destroying organism inspection reports issued by a structural pest inspector in conjunction with the transfer, exchange, or refinancing of any structure.

(21) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

~~((21))~~ (22) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

~~((22))~~ (23) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

~~((23))~~ (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 using a master application and a master license expiration date common to each renewable license endorsement.

~~((24))~~ (25) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

~~((25))~~ (26) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

~~((26))~~ (27) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((27))~~ (28) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

~~((28))~~ (29) "Pest control consultant" means any individual who acts as a structural pest ~~((control))~~ inspector, who sells or offers for sale at other than a licensed pesticide dealer outlet or location where they are employed, or who offers or supplies technical advice, supervision, or aid, or makes recommendations to the user of:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

~~((29))~~ (30) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

~~((30))~~ (31) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act.

~~((31))~~ (32) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

~~((32))~~ (33) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

~~((33))~~ (34) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their

produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

~~((34))~~ (35) "Registrant" means the person registering any pesticide under the provisions of this chapter.

~~((35))~~ (36) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

~~((36))~~ (37) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

~~((37))~~ (38) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own, intended to be used with any other pesticide as an aid to the application or to the effect of the pesticide, and which is in a package or container separate from that of the pesticide with which it is to be used.

~~((38))~~ (39) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

~~((39))~~ (40) "Structural pest ~~(control)~~ inspector" means any individual who performs the service of inspecting a building for wood destroying organisms, their damage, or conditions conducive to their infestation.

~~((40))~~ (41) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((41))~~ (42) "Weed" means any plant which grows where not wanted.

(43) "Wood destroying organism inspection report" means any written document that reports or comments on the presence or absence of wood destroying organisms, their damage, and/or conducive conditions leading to the establishment of such organisms.

NEW SECTION. Sec. 2. A new section is added to chapter 15.58 RCW to read as follows:

It is unlawful for any person to issue a wood destroying organism inspection report, prepared in conjunction with the transfer, exchange, or refinancing of any structure, without recording a unique inspection control number on the wood destroying organism inspection report. All wood destroying organism inspection reports completed by the same inspector, relating to a single transfer, exchange, or refinance, shall bear the same unique inspection control number. The responsibility to record the unique inspection control number on the report under

this section lies solely with the person issuing the wood destroying organism inspection report.

NEW SECTION. Sec. 3. A new section is added to chapter 15.58 RCW to read as follows:

(1) The director shall not issue a license to any person who intends to act as a structural pest inspector until the person has furnished evidence of financial responsibility.

(2) Evidence of financial responsibility shall consist of either a surety bond or an errors and omissions insurance policy or certification thereof, protecting persons who may suffer legal damages as a result of actions by the structural pest inspector. The director shall not accept a surety bond or insurance policy except from authorized insurers in this state.

(3) Evidence of financial responsibility shall be supplied to the department on a financial responsibility insurance certificate or surety bond form.

NEW SECTION. Sec. 4. A new section is added to chapter 15.58 RCW to read as follows:

(1) The following requirements apply to the amount of surety bond or insurance required for structural pest inspectors.

(a) The amount of the surety bond or errors and omissions insurance, as provided for in section 3 of this act, shall be not less than twenty-five thousand dollars and fifty thousand dollars respectively. The surety bond or insurance policy shall be maintained at not less than the required sum at all times during the licensed period.

(b) The director shall be notified ten days before any reduction of insurance coverage at the request of the applicant or cancellation of the surety bond or insurance by the surety or insurer and by the insured.

(c) The total and aggregate of the surety and insurer for all claims is limited to the face of the surety bond or insurance policy. The director may accept a surety bond or insurance policy in the proper sum that has a deductible clause in an amount not exceeding five thousand dollars for the total amount of surety bond or insurance required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause shall not be accepted by the director unless the applicant furnishes the director with a surety bond or insurance policy which shall satisfy the amount of the deductible as to all claims that may arise.

(2) Insurance policies must be written on an occurrence basis.

(3) Insurance policies shall have a minimum three-year occurrence clause.

NEW SECTION. Sec. 5. A new section is added to chapter 15.58 RCW to read as follows:

Whenever a structural pest inspector's surety bond or insurance policy is reduced below the requirements of section 4 of this act, or whenever the person has failed to provide evidence of financial responsibility as required by section 3 of this act by the expiration date of the previous surety bond or insurance policy, the

director shall immediately suspend the person's structural pest inspector license until the person's surety bond or insurance policy again meets the requirements of section 4 of this act.

Sec. 6. RCW 15.58.150 and 1991 c 264 s 3 are each amended to read as follows:

(1) It is unlawful for any person to distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of this chapter;

(b) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: PROVIDED, That at the discretion of the director, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(c) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this chapter and the rules adopted under this chapter;

(d) Any pesticide including arsenicals, fluorides, fluosilicates, and/or any other white powdered pesticides unless they have been distinctly denatured as to color, taste, odor, or form if so required by rule;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating rules adopted pursuant to RCW 15.58.040(2)(f) or pesticides found in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) To sell or deliver any pesticide to any person who is required by law or rules promulgated under such law to be certified, licensed, or have a permit to use or purchase the pesticide unless such person or the person's agent, to whom sale or delivery is made, has a valid certification, license, or permit to use or purchase the kind and quantity of such pesticide sold or delivered: PROVIDED, That, subject to conditions established by the director, such permit may be obtained immediately prior to sale or delivery from any person designated by the director;

(b) For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this chapter or rules adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter or the rules adopted thereunder;

(c) For any person to use or cause to be used any pesticide contrary to label directions or to regulations of the director if those regulations differ from or further

restrict the label directions: PROVIDED, The compliance to the term "contrary to label directions" is enforced by the director consistent with the intent of this chapter;

(d) For any person to use for his or her own advantage or to reveal, other than to the director or proper officials or employees of the state, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of RCW 15.58.060;

(e) For any person to make false, misleading, or erroneous statements or reports concerning any pest during or after a pest inspection or to fail to comply with criteria established by rule for structural pest (~~control~~) inspections;

(f) For any person to make false, misleading, or erroneous statements or reports in connection with any pesticide complaint or investigation;

(g) For any person to advertise that the person is a licensed structural pest inspector without having a valid pest control consultant license in the category of structural pest inspector.

Sec. 7. RCW 15.58.233 and 1997 c 242 s 10 are each amended to read as follows:

(1) The director may renew any license issued under this chapter subject to the recertification standards identified in subsection (2) of this section or an examination requiring new knowledge that may be required to apply pesticides.

(2) Except as provided in subsection (3) of this section, all individuals licensed under this chapter shall meet the recertification standards identified in (a) or (b) of this subsection, every five years, in order to qualify for continuing licensure.

(a) (~~Licensed pesticide applicators~~) Individuals licensed under this chapter may qualify for continued licensure through accumulation of recertification credits. Individuals licensed under this chapter shall accumulate a minimum of forty department-approved credits every five years with no more than fifteen credits allowed per year.

(b) (~~Licensed pesticide applicators~~) Individuals licensed under this chapter may qualify for continued licensure through meeting the examination requirements necessary to become licensed in those areas in which the licensee operates.

(3) At the termination of a licensee's five-year recertification period, the director may waive the recertification requirements if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency-approved government agency plan.

Sec. 8. RCW 15.58.040 and 1997 c 242 s 1 are each amended to read as follows:

(1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW

shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity category I due to oral inhalation or dermal toxicity. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require rules restricting or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. The director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter;

(j) Regulating the labeling of devices;

(k) The establishment of criteria governing the conduct of a structural pest (~~control~~) inspection; and

(l) Declaring crops, when grown to produce seed specifically for crop reproduction purposes, to be nonfood and/or nonfeed sites of pesticide application.

The director may include in the rule any restrictions or conditions regarding: (i) The application of pesticides to the designated crops; and (ii) the disposition of any portion of the treated crop.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency.

Sec. 9. RCW 15.58.210 and 1997 c 242 s 6 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, no individual may perform services as a pest control consultant without obtaining a license from the director. The license shall expire annually on a date set by rule by the director. Except as provided in subsection (3) of this section, no individual may act as a structural pest (~~(control)~~) inspector without first obtaining from the director a pest control consultant license in the special category of structural pest (~~(control)~~) inspector. Application for a license shall be on a form prescribed by the director and shall be accompanied by a fee of forty-five dollars.

(2) The following are exempt from the licensing requirements of subsection (1) of this section when acting within the authorities of their existing licenses issued under chapter 17.21 RCW: Licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators. The following are also exempt from the licensing requirements of subsection (1) of this section: Employees of federal, state, county, or municipal agencies when acting in their official governmental capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet.

(3) The following are exempt from the structural pest (~~(control)~~) inspector licensing requirement: Individuals inspecting for damage caused by wood destroying organisms if such inspections are solely for the purpose of: (a) Repairing or making specific recommendations for the repair of such damage, or (b) assessing a monetary value for the structure inspected. Individuals performing wood destroying organism inspections that incorporate but are not limited to the activities described in (a) or (b) of this subsection are not exempt from the structural pest (~~(control)~~) inspector licensing requirement.

NEW SECTION. Sec. 10. This act takes effect July 1, 2000.

Passed the House March 7, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 97

[Substitute House Bill 2628]

COLOSTRUM MILK

AN ACT Relating to colostrum milk; and amending RCW 15.36.151.

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

Sec. I. RCW 15.36.151 and 1999 c 29] s 7 are each amended to read as follows:

It is unlawful to sell, offer for sale, or deliver:

(1) Milk or products produced from milk from cows, goats, or other mammals affected with disease or of which the owner thereof has refused official examination and tests for disease; or

(2) Colostrum milk for consumption by humans, except that this prohibition regarding colostrum milk does not apply to:

(a) Colostrum milk ((from cows that have been tested for brucellosis within sixty days of parturition may)) made or to be made available to persons having multiple sclerosis, or other persons acting on their behalf, who, at the time of the initial sale, present a form, signed by a licensed physician, certifying that the intended user has multiple sclerosis and that the user releases the provider of the milk from liability resulting from the consumption of the milk((~~Colostrum milk provided under this section is exempt from meeting the standards for grade A raw milk required by this chapter~~)); or

(b) Colostrum milk processed or to be processed by a licensed food processing facility or a milk processing plant as a nutritional supplement in accordance with the federal dietary supplement health and education act. Colostrum milk used for this purpose must be pasteurized or otherwise subjected to a heat process or other treatment sufficient to kill harmful organisms.

Colostrum milk described in subsection (2)(a) or (b) of this section is exempt from the prohibition provided by subsection (2) of this section if it comes from a licensed producer. Such colostrum milk is also exempt from meeting the standards for grade A raw milk required by this chapter.

Passed the House February 8, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 98

[Engrossed Second Substitute House Bill 2867]

UNDERGROUND WATER STORAGE

AN ACT Relating to underground water storage; amending RCW 90.44.035 and 90.03.370; and adding a new section to chapter 90.44 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 90.44 RCW to read as follows:

The legislature recognizes the importance of sound water management. In an effort to promote new and innovative methods of water storage, the legislature authorizes the department of ecology to issue reservoir permits that enable an entity to artificially store and recover water in any underground geological formation, which qualifies as a reservoir under RCW 90.03.370.

Sec. 2. RCW 90.44.035 and 1987 c 109 s 107 are each amended to read as follows:

For purposes of this chapter:

(1) "Department" means the department of ecology;

(2) "Director" means the director of ecology;

(3) "Ground waters" means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves. There is a recognized distinction between natural ground water and artificially stored ground water;

(4) "Natural ground water" means water that exists in underground storage owing wholly to natural processes; ~~((and))~~

(5) "Artificially stored ground water" means water that is made available in underground storage artificially, either intentionally, or incidentally to irrigation and that otherwise would have been dissipated by natural ~~((waste))~~ processes; and

(6) "Underground artificial storage and recovery project" means any project in which it is intended to artificially store water in the ground through injection, surface spreading and infiltration, or other department-approved method, and to make subsequent use of the stored water. However, (a) this subsection does not apply to irrigation return flow, or to operational and seepage losses that occur during the irrigation of land, or to water that is artificially stored due to the construction, operation, or maintenance of an irrigation district project, or to projects involving water reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130 applies to those instances of claimed artificial recharge occurring due to the construction, operation, or maintenance of an irrigation district project or operational and seepage losses that occur during the irrigation of land, as well as other forms of claimed artificial recharge already existing at the time a ground water subarea is established.

Sec. 3. RCW 90.03.370 and 1987 c 109 s 93 are each amended to read as follows:

(1) All applications for reservoir permits shall be subject to the provisions of RCW 90.03.250 through 90.03.320. But the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall also file an application for a permit, to be known as the secondary permit, which shall be in compliance with the provisions of RCW 90.03.250 through 90.03.320. Such secondary

application shall refer to such reservoir as its source of water supply and shall show documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When the beneficial use has been completed and perfected under the secondary permit, the department shall take the proof of the water users under such permit and the final certificate of appropriation shall refer to both the ditch and works described in the secondary permit and the reservoir described in the primary permit.

(2)(a) For the purposes of this section, "reservoir" includes, in addition to any surface reservoir, any naturally occurring underground geological formation where water is collected and stored for subsequent use as part of an underground artificial storage and recovery project. To qualify for issuance of a reservoir permit an underground geological formation must meet standards for review and mitigation of adverse impacts identified, for the following issues:

- (i) Aquifer vulnerability and hydraulic continuity;
- (ii) Potential impairment of existing water rights;
- (iii) Geotechnical impacts and aquifer boundaries and characteristics;
- (iv) Chemical compatibility of surface waters and ground water;
- (v) Recharge and recovery treatment requirements;
- (vi) System operation;
- (vii) Water rights and ownership of water stored for recovery; and
- (viii) Environmental impacts.

(b) Standards for review and standards for mitigation of adverse impacts for an underground artificial storage and recovery project shall be established by the department by rule. Notwithstanding the provisions of RCW 90.03.250 through 90.03.320, analysis of each underground artificial storage and recovery project and each underground geological formation for which an applicant seeks the status of a reservoir shall be through applicant-initiated studies reviewed by the department.

(3) For the purposes of this section, "underground artificial storage and recovery project" means any project in which it is intended to artificially store water in the ground through injection, surface spreading and infiltration, or other department-approved method, and to make subsequent use of the stored water. However, (a) this subsection does not apply to irrigation return flow, or to operational and seepage losses that occur during the irrigation of land, or to water that is artificially stored due to the construction, operation, or maintenance of an irrigation district project, or to projects involving water reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130 applies to those instances of claimed artificial recharge occurring due to the construction, operation, or maintenance of an irrigation district project or operational and seepage losses that occur during the irrigation of land, as well as other forms of claimed artificial recharge already existing at the time a ground water subarea is established.

(4) Nothing in this act changes the requirements of existing law governing issuance of permits to appropriate or withdraw the waters of the state.

(5) The department shall report to the legislature by December 31, 2001, on the standards for review and standards for mitigation developed under subsection (3) of this section and on the status of any applications that have been filed with the department for underground artificial storage and recovery projects by that date.

Passed the House March 6, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 99

[Substitute House Bill 2377]

CUSTOM MEAT SLAUGHTER—PREPARATION

AN ACT Relating to custom meat slaughter and preparation; amending RCW 16.49.435, 16.49.680, 16.49.440, 16.49.690, 16.49.610, 16.49.451, 16.49.700, 16.49.710, 16.49.444, 16.49.510, and 16.49.670; adding new sections to chapter 16.49 RCW; adding a new section to chapter 16.57 RCW; recodifying RCW 16.49.435, 16.49.680, 16.49.440, 16.49.690, 16.49.610, 16.49.451, 16.49.700, 16.49.710, 16.49.444, 16.49.510, and RCW 16.49.670; repealing RCW 16.49.441, 16.49.442, 16.49.454, 16.49.500, 16.49.630, and 16.49.635; 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 16.49 RCW to read as follows:

This chapter is intended to safeguard the household user of uninspected and inspected meat products from possible harm due to adulterated, misbranded, or unfit meat or meat products or meat or meat products that have been prepared under insanitary conditions.

Sec. 2. RCW 16.49.435 and 1999 c 291 s 28 are each amended to read as follows:

For the purposes of this chapter:

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

(2) "Director" means the director of the department or the director's designee.

(3) "Custom farm slaughterer" means ~~((any))~~ a person licensed ~~((under this chapter who may under such license engage in the business of slaughtering))~~ to slaughter meat food animals ~~((only))~~ for the ~~((consumption of the))~~ owner ~~((thereof))~~ of the animal through the use of ~~((an approved))~~ a mobile unit ~~((under such conditions as may be prescribed by the director)).~~

(4) "Custom slaughtering establishment" means the facility operated by ~~((any))~~ a person licensed ~~((under this chapter who may under such license engage in the business of slaughtering))~~ to slaughter meat food animals ~~((only))~~ for the ~~((consumption of the))~~ owner ~~((thereof))~~ of the animal at a fixed location ~~((under such conditions as may be prescribed by the director)).~~

(5) "Custom meat facility" means the facility operated by ~~((any))~~ a person licensed ~~((under this chapter who may under such license engage in the business~~

~~of preparing)) to prepare~~ uninspected meat for the ~~((sole consumption of the))~~ owner of the uninspected meat ~~((being prepared))~~. Operators of custom meat facilities may also ~~((prepare inspected meat for household users only under such conditions as may be prescribed by the director and may sell such prepared inspected meat to household users only. Operators of custom meat facilities may also))~~ sell prepackaged inspected meat to any person ~~((, provided the prepackaged inspected meat is not prepared in any manner by the operator and the operator does not open or alter the original package that the inspected meat was placed in))~~. This chapter does not prohibit the operator of a custom meat facility from being licensed to prepare at the facility and sell inspected meat to any person.

(6) "Inspected meat" means the carcasses or carcass parts ~~((thereof))~~ of meat food animals which have been slaughtered and inspected at establishments subject to inspection under a federal meat inspection act.

(7) "Uninspected meat" means the carcasses or carcass parts ~~((thereof))~~ of meat food animals ~~((which))~~ that have been slaughtered by the owner ~~((thereof, or which have been slaughtered by))~~ of the animals, a custom farm slaughterer, or at a custom slaughtering establishment.

(8) "Household user" means the ultimate consumer, ~~((the))~~ members of the consumer's household, and his or her nonpaying guests and employees.

(9) "Person" means any ~~((natural person, firm))~~ individual, partnership, ~~((exchange,))~~ association, ~~((trustee, receiver,))~~ and corporation ~~((, and any member, officer, or employee thereof or assignee for the benefit of creditors))~~.

(10) "Meat food animal" means cattle, swine, sheep, or goats.

(11) "Meat food bird" means a ratite, such as an ostrich, emu, or rhea.

(12) "Official establishment" means an establishment operated for the purpose of slaughtering meat food animals for sale or use as human food in compliance with the federal meat inspection act ~~((21 U.S.C. Sec. 71 et seq.))~~.

~~((12))~~ (13) "Prepared" means ~~((canned))~~ smoked, salted, rendered, boned, cut up, or otherwise ~~((manufactured, or))~~ processed.

Sec. 3. RCW 16.49.680 and 1987 c 77 s 5 are each amended to read as follows:

~~((To ensure the sanitary slaughtering of meat food animals and handling of meat and meat food products by licensees under this chapter, the director may adopt such rules as the director finds necessary to protect public health and safety. To ensure the identification of meat food animals slaughtered by licensees and the meat and meat food products handled by licensees, both as to ownership and as to whether the product is uninspected meat or inspected meat, the director may adopt such rules as the director finds necessary. The director may also adopt such other rules as the director finds necessary to carry out this chapter.))~~ The director shall enforce and carry out the provisions of this chapter and adopt rules necessary to carry out its purpose. The rules may include, but are not limited to:

(1) Requirements for construction, equipment, cleaning, sanitation, and sanitary practices to ensure sanitary operations;

(2) Requirements for identification or tagging of meat food animals slaughtered by licensees to maintain identification of the owner of the animal;

(3) Requirements for handling and storing inspected and uninspected meats and meat products;

(4) Requirements for labeling meat and meat products; and

(5) Requirements for slaughtering and processing of meat food birds by licensees.

Sec. 4. RCW 16.49.440 and 1991 c 109 s 4 are each amended to read as follows:

(1) It ~~((shall be))~~ is unlawful for any person to ~~((act))~~ operate as a custom farm slaughterer or to operate a custom slaughtering establishment or custom meat facility in the state without first obtaining a license from the director. ~~((The license shall be an annual license and shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. For))~~ Custom farm slaughterers~~((;))~~ must obtain a separate license ~~((shall be required))~~ for each mobile unit. Separate licenses are required for each custom slaughtering establishment and custom meat facility ~~((shall also require a separate license)).~~

(2) Application for a license ~~((shall))~~ must be made on a form prescribed by the director ~~((of agriculture))~~ and accompanied by a twenty-five dollar ~~((annual))~~ license fee. The application ~~((shall))~~ must include:

(a) The full name and address of the applicant. If the applicant is a partnership or corporation, the application ~~((shall))~~ must include the full name and address of each partner or officer~~((;))~~;

(b) The physical location address of each establishment or facility to be licensed;

(c) ~~((application shall further state the principal business address of the applicant in the state or elsewhere and the))~~ name and address of a resident of this state authorized to ~~((receive and))~~ accept ~~((service of summons of))~~ legal notices ~~((of all kinds))~~ for the applicant~~((;))~~; and

(d) Any other ~~((necessary))~~ information prescribed by the director ~~((of agriculture. The license shall be issued by the director upon his satisfaction that the applicant's equipment is properly constructed, has the proper sanitary and mechanical equipment and is maintained in a sanitary manner as required under this chapter and/or rules adopted hereunder. The director of agriculture shall also provide for the periodic inspection of equipment used by licensees to assure compliance with the provisions of this chapter and the rules adopted hereunder)).~~

(3) If an application for renewal of a license and the license fee are not received by June 30th, the applicant must pay an additional fee of twenty-five dollars before the renewal license is issued.

(4) Initial issuance of a license requires a precense inspection by the director for compliance with this chapter and rules adopted under this chapter. A license

shall only be issued after an applicant is found to be in substantial compliance with this chapter and rules adopted under this chapter.

(5) Licenses issued under this chapter expire June 30th of each year.

(6) Licenses issued under this chapter are not transferrable.

Sec. 5. RCW 16.49.690 and 1987 c 77 s 8 are each amended to read as follows:

To ~~((ensure that licensees under this chapter maintain proper sanitary practices and comply))~~ determine compliance with ~~((all the provisions of))~~ this chapter and the rules adopted ~~((hereunder))~~ under this chapter, the director may inspect the mobile unit of any custom farm slaughterer and the premises of any custom slaughtering establishment or custom meat facility at any reasonable time. ~~((No person may interfere with the director in the performance of his or her duties under this chapter or the rules adopted hereunder.))~~

Sec. 6. RCW 16.49.610 and 1987 c 77 s 3 are each amended to read as follows:

Inspected and uninspected meat may only be prepared by a custom meat facility under the following conditions:

(1) Inspected meat and ~~((the meat and))~~ meat ~~((food))~~ products prepared ~~((therefrom shall))~~ from inspected meat must be kept separated ~~((at all times))~~ from uninspected meat and ~~((the))~~ meat ~~((food))~~ products prepared ~~((therefrom, by a sufficient distance))~~ from uninspected meat to prevent inspected meat from coming into contact with uninspected meat.

(2) Preparation of inspected meat and uninspected meat ~~((shall))~~ must be done at different times.

(3) ~~((No sales of inspected meat, nor the meat food products derived therefrom shall be made to any person other than a household user.))~~ Equipment used in preparing uninspected meat or products prepared from uninspected meat must be cleaned and sanitized before being used to prepare inspected meat.

(4) Uninspected meat ~~((shall))~~ may be prepared only for the ~~((sole))~~ use of the owner ~~((of said uninspected meat)),~~ who ~~((shall))~~ must be a household user.

(5) ~~((Inspected meat may be purchased by a custom meat facility for preparation and sale to a household user only.~~

~~((6))~~ Uninspected meat ~~((, as well as the packages and containers containing any meat or))~~ and meat ~~((food))~~ products prepared ~~((therefrom shall))~~ from uninspected meat must be ~~((plainly))~~ clearly marked and labeled "not for sale" ~~((or as otherwise prescribed by the director)).~~

~~((7))~~ Any custom meat facility shall comply with sanitation rules and regulations promulgated by the director. (6) Packages of uninspected meat may not be stored in a retail counter.

Sec. 7. RCW 16.49.451 and 1967 ex.s. c 120 s 4 are each amended to read as follows:

~~((Notwithstanding any other provisions of the law, any))~~ A licensed custom farm slaughterer may ~~((, without the need for any other license,))~~ transport the offal

of a meat food animal he or she has slaughtered for the owner ~~((thereof))~~, when ~~((such offal))~~ it is transported as ~~((a))~~ part of ~~((such))~~ a slaughtering transaction and ~~((such))~~ the offal is handled in a sanitary ~~((suitable container and))~~ manner ~~((as provided by the director))~~.

Sec. 8. RCW 16.49.700 and 1987 c 77 s 9 are each amended to read as follows:

It is unlawful for any person to:

~~(1) Sell, trade, or give away uninspected meat or ((the)) meat ((food)) products ((that may be derived therefrom. Any violation of this section by a licensee under this chapter shall be sufficient reason for the revocation of the licensee's license));~~

~~or~~

(2) Interfere with the director in the performance of his or her duties under this chapter or the rules adopted under this chapter.

Sec. 9. RCW 16.49.710 and 1987 c 77 s 10 are each amended to read as follows:

The director may investigate any violation or possible violation of this chapter or any rule adopted under this chapter. ~~((In the furtherance of any))~~ To assist in such investigation, the director may issue subpoenas to compel the attendance of witnesses or ~~((the))~~ to compel production of ~~((books))~~ records or documents anywhere in the state.

Sec. 10. RCW 16.49.444 and 1994 c 128 s 1 are each amended to read as follows:

The director ~~((of agriculture))~~ may ~~((subsequent to a hearing under chapter 34.05 RCW,))~~ deny, suspend, ~~((establish conditions of probation for a designated period of time,))~~ or revoke any license required under this chapter if ~~((it is determined))~~ the director determines that an applicant or licensee has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted ~~((hereunder))~~ under this chapter, or any lawful order of the ~~((department of agriculture))~~ director;

(2) Refused, neglected, or failed to keep and maintain records required ~~((by))~~ under this chapter ~~((;))~~ or rules adopted under this chapter to make the records available ~~((when requested under this chapter; or))~~ to the director on request;

(3) Refused the director ~~((of agriculture))~~ access to any facilities or parts of the facilities ~~((subject to))~~ for the purpose of carrying out the provisions of this chapter or rules adopted under this chapter; or

(4) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, intrastate commerce in food, drugs, and cosmetics, or rules adopted under that chapter.

Upon receipt of notice by the director to deny, suspend, or revoke a license, a person may request a hearing under chapter 34.05 RCW.

Sec. 11. RCW 16.49.510 and 1994 c 128 s 2 are each amended to read as follows:

~~((If the director finds that a person has committed a violation of any provision of this chapter or rules adopted under this chapter, the director may impose upon and collect from the violator, a civil penalty not exceeding))~~ Any person who fails to comply with this chapter or the rules adopted under this chapter may be subject to a civil penalty in an amount of not more than one thousand dollars per violation per day. Each violation is a separate and distinct offense.

~~((The violation of any provision of this chapter or rules adopted hereunder shall constitute a gross misdemeanor.~~

~~— Both a civil penalty and a criminal penalty may not be imposed for the same violation.))~~ All moneys collected for civil penalties under this chapter shall be deposited in the state general fund.

NEW SECTION. Sec. 12. A new section is added to chapter 16.49 RCW to read as follows:

Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making, assessment of civil penalties, emergency actions, and license suspension, revocation, or denial.

Sec. 13. RCW 16.49.670 and 1999 c 291 s 29 are each amended to read as follows:

The provisions of this chapter relating to the sale of inspected meat in custom meat facilities ~~((shall in no way))~~ do not supersede or restrict the authority of any county or any city to adopt ordinances ~~((which))~~ that are more restrictive for the handling and sale of inspected meat than those provided ~~((for herein))~~ in this chapter.

NEW SECTION. Sec. 14. A new section is added to chapter 16.57 RCW to read as follows:

Any person licensed as a custom farm slaughterer under RCW 16.49.440 (as recodified by this act) shall complete and attach a custom slaughter beef tag to each of the four quarters of all slaughtered cattle handled by the slaughterer. The tags must remain on the quarters until the quarters are cut and wrapped. Only the director may provide custom slaughter beef tags to custom farm slaughterers. The fee for each set of four custom slaughter beef tags is as prescribed in WAC 16-607-100 as it existed on January 1, 2000. The director may, by rule, establish criteria for the use of custom slaughter beef tags.

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

(1) RCW 16.49.441 (Custom farm slaughterers—Prelicense inspections) and 1987 c 77 s 6;

(2) RCW 16.49.442 (Additional fee for late renewal—Exception) and 1991 c 109 s 5 & 1985 c 415 s 11;

(3) RCW 16.49.454 (Establishment of need—Contents of application—Hearing) and 1989 c 175 s 53, 1987 c 77 s 2, & 1961 c 91 s 2;

(4) RCW 16.49.500 (Washington State University laboratories exemption—Inspection, stamping) and 1959 c 204 s 50;

(5) RCW 16.49.630 (Custom meat facilities—License—Generally) and 1991 c 109 s 6 & 1971 ex.s. c 98 s 5; and

(6) RCW 16.49.635 (Custom meat facilities—Prelicense inspections) and 1987 c 77 s 7.

NEW SECTION. Sec. 16. The following sections are codified or recodified within chapter 16.49 RCW in the following order:

Section 1 of this act;

16.49.435;

16.49.680;

16.49.440;

16.49.690;

16.49.610;

16.49.451;

16.49.700;

16.49.710;

16.49.444;

16.49.510;

Section 12 of this act; and

16.49.670.

Passed the House February 11, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 100

[Engrossed House Bill 2995]

APIARIES

AN ACT Relating to apiaries; amending RCW 15.60.005, 15.60.010, 15.60.050, 15.60.043, 15.60.040, and 17.24.007; adding new sections to chapter 15.60 RCW; recodifying RCW 15.60.005, 15.60.010, 15.60.050, 15.60.043, 15.60.040, 15.60.170, 15.60.180, 15.60.190, 15.60.210, 15.60.220, and 15.60.900; repealing RCW 15.60.007, 15.60.015, 15.60.020, 15.60.025, 15.60.030, 15.60.042, 15.60.100, 15.60.110, 15.60.120, 15.60.140, 15.60.150, and 15.60.230; and providing an effective date.

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

Sec. 1. RCW 15.60.005 and 1994 c 178 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 department of agriculture of the state of Washington.

(2) "Director" means the director of the state department of agriculture or the director's authorized representative.

(3) "Apiary" means a site where hives of bees or hives are kept or found.

(4) ~~("Abandoned hive" means any hive, with or without bees, that evidences a lack of being properly managed in that it has not been supered in the spring, except nucs, or unsupered in the fall, or is otherwise unmanaged and left without authorization and unattended on the property of another person or on public land.~~
~~(5))~~ "Apiarist" means any person who owns bees or is a keeper of bees in Washington.

~~((6) "Beekeeping equipment" means any implements or devices used in the manipulation of bees, their brood, or hives in an apiary.~~

~~(7))~~ (5) "Bees" means adult insects, eggs, larvae, pupae, or other immature stages of the species *Apis mellifera*.

~~((8) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter and accompanying the movement of inspected bees, bee hives, or beekeeping equipment.~~

~~(9))~~ (6) "Colony" refers to a natural group of bees having a queen or queens.

~~((10) "Compliance agreement" means a written agreement between the department and a person engaged in apiculture, or handling, selling, or moving of hives or beekeeping equipment in which the person agrees to comply with stipulated requirements.~~

~~(11) "Feral colony" means a colony of bees in a natural cavity or a manufactured structure not intended for the keeping of bees on movable frames and comb.~~

~~(12) "Swarm" means a natural group of bees having a queen or queens, which is the progeny of a parent colony, without a hive, and not a feral colony.~~

~~(13) "Disease" means American foulbrood, European foulbrood, chalkbrood, nosema, sacbrood, or any other viral, fungal, bacterial or insect-related disease affecting bees or their brood.~~

~~(14) "Regulated bee pests" means a disease of bees for which maximum allowable limits of infection, or mites, or other parasites are set in rule.~~

~~(15))~~ (7) "Hive" means a manufactured receptacle or container prepared for the use of bees, that includes movable frames, combs, and substances deposited into the hive by bees.

~~((16))~~ (8) "Person" means a natural person, individual, firm, partnership, company, society, association, corporation or every officer, agent, or employee of one of these entities.

~~((17) "Bee pests" means a disease, mite, or other parasite that causes injury to bees.~~

~~(18) "Nets" means a device that is made of fabricated material and that is designed and utilized to prevent the escape of bees from bee hives during transit.~~

~~—(19) "Apparently free" means no specified bee pest was found during inspection of survey activities.~~

~~—(20) "Substantially free" means levels of specified bee pests found during inspection or survey activities were within established tolerances.~~

~~—(21) "Africanized honey bee" means any bee of the subspecies *Apis mellifera scutellata*.~~

~~—(22) "Super" means the portion of a hive in which honey is stored by bees.~~

~~—(23)) (9) "Broker" means a person(;) who is engaged in pollinating agricultural crops(;) for a fee using hives that are owned by another person.~~

~~((24) "Grower" means a person engaged in producing agricultural crops, and a user of honey bees for pollination of the crops.))~~

Sec. 2. RCW 15.60.010 and 1994 c 178 s 3 are each amended to read as follows:

~~((An apiary advisory committee is established to advise the director on the administration of this chapter. The apiary advisory committee may consist of up to eleven members.~~

~~—(1) The committee shall include six apiarists, appointed by the director, and representing the major geographical divisions of the beekeeping industry in the state as established in rule. In making an appointment, the director shall seek nominations from the beekeepers' organizations within the geographic area and from nonaffiliated apiarists. Apiarists may nominate themselves.~~

~~—(2) The committee shall include the director and a representative from the Washington State University apiary program or cooperative extension.~~

~~—(3) The committee may include up to three representatives of receivers of pollination services.~~

~~—(4) The terms of the apiarist members of the committee shall be staggered and the members shall serve a term of three years and until their successors have been appointed and qualified.~~

~~—In the event a committee member resigns, is disqualified, or vacates a position on the committee for any reason, the vacancy shall be filled by the director under the provisions of this section.~~

~~—(5)) The director may establish an apiary advisory committee including members representing the major segments of the apiary industry including commercial and noncommercial beekeepers, representatives from the Washington State University apiary program or cooperative extension, and receivers of pollination services as deemed appropriate.~~

~~The committee shall advise the director on administration of this chapter and issues affecting the apiary industry. The committee may also advise the director on the funding of research projects of benefit to the apiary industry.~~

~~The committee shall meet ((at least once yearly. It may also meet)) at the call of the director ((or the request of any three members of the committee)). Members of the committee shall serve without compensation but ((shall)) may be reimbursed for travel expenses incurred in attending meetings of the committee and any other~~

official duty authorized ~~((by the committee and approved))~~ by the director, pursuant to RCW 43.03.050 and 43.03.060~~((, if apiarists are charged a registration fee, under RCW 15.60.050, to cover the expenses of the committee))~~.

Sec. 3. RCW 15.60.050 and 1994 c 178 s 6 are each amended to read as follows:

~~(1)~~ Each person owning one or more hives with bees, brokers ~~((of))~~ renting hives, and ((beekeepers)) apiarists resident in other states who operate hives in Washington~~((;))~~ shall register with the director ~~((on or before))~~ by April 1st each year.

~~((+))~~ ~~(2)~~ The registration application shall include:

(a) The name, address, and phone number of the ((owner)) apiarist or broker((;));

(b) The number of colonies of bees to be owned, brokered, or operated in Washington((, and such)) that year;

(c) A registration fee as ((may be)) prescribed in rule ((under subsection (2) of this section:)) by the director, with the advice of the apiary advisory committee; and

(d) Any other information required by the department by rule.

~~(3)~~ The director shall issue to each ~~((resident))~~ apiarist or broker registered with the department an apiarist identification number. ~~((The apiarist identification number shall be displayed on hives of an apiary in a manner prescribed by the director in rule.~~

~~— (2) A registration fee may be set in rule by the director, with the advice of the apiary advisory committee. The fee shall be used for covering the expenses of the apiary advisory committee and may be used for supporting the industry apiary program of the department or funding research projects of benefit to the apiary industry that the director may select upon the advice of the apiary advisory committee:))~~

Sec. 4. RCW 15.60.043 and 1994 c 178 s 5 are each amended to read as follows:

~~((The inspection fees, registration fees, pollination service fees, and other charges provided in this chapter shall become due and payable upon billing by the department:))~~ A late ~~((charge))~~ fee of one and one-half percent per month shall be assessed on ~~((the unpaid balance against persons more than thirty days in arrears. In addition to any other penalties, the director may refuse to perform an inspection or certification service for a person in arrears unless the person makes payment in full prior to such inspection or certification service))~~ registration fees received after April 1st.

Sec. 5. RCW 15.60.040 and 1994 c 178 s 4 are each amended to read as follows:

~~((1) There is hereby established a fee on the use, by growers of agricultural crops, of bee pollination services provided by others. This pollination service fee is in the amount of fifty cents for each setting of each hive containing a colony that~~

~~is used by the grower. The fee shall be paid by the grower using the service, shall be collected by the beekeeper providing the service, and shall be remitted by the beekeeper to the department as provided by rules adopted by the director. All such fees shall be deposited in the industry apiary program account. Revenues from these fees shall be directed to use in providing services to the apiary industry that assist in ensuring the vitality and availability of bees for commercial pollination services for the agricultural industry.~~

~~(2) There is established an industry apiary program account within the agricultural local fund.) All money collected under this chapter ((including fees for requested services, required inspections, or treatments, registration fees, and apiary assessments)) shall be placed in ((the industry apiary program)) an account in the agricultural local fund. Money in the account ((may only)) shall be used to carry out the purposes of this chapter and may be used for apiary-related activities of the department or funding research projects of benefit to the apiary industry that the director may select upon the advice of the apiary advisory committee. No appropriation is required for disbursement from the ((industry apiary program)) account.~~

Sec. 6. RCW 17.24.007 and 1991 c 257 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 state department of agriculture.

(2) "Director" means the director of the state department of agriculture or the director's designee.

(3) "Quarantine" means a rule issued by the department that prohibits or regulates the movement of articles, bees, plants, or plant products from designated quarantine areas within or outside the state to prevent the spread of disease, plant pathogens, or pests to nonquarantine areas.

(4) "Plant pest" means a living stage of an insect, mite, nematode, slug, snail, or protozoa, or other invertebrate animal, bacteria, fungus, or parasitic plant, or their reproductive parts, or viruses, or an organism similar to or allied with any of the foregoing plant pests, including a genetically engineered organism, or an infectious substance that can directly or indirectly injure or cause disease or damage in plants or parts of plants or in processed, manufactured, or other products of plants.

(5) "Plants and plant products" means trees, shrubs, vines, forage, and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from the plants and plant products.

(6) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or a form of inspection and certification document that accompanies the movement of

inspected and certified plant material and plant products, or bees, bee hives, or beekeeping equipment.

(7) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, plant products, or bees, bee hives, or beekeeping equipment regulated under this chapter, in which the person agrees to comply with stipulated requirements.

(8) "Distribution" means the movement of a regulated article from the property where it is grown or kept, to property that is not contiguous to the property, regardless of the ownership of the properties.

(9) "Genetically engineered organism" means an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant DNA techniques, excluding those organisms covered by the food, drug and cosmetic act (21 U.S.C. Secs. 301-392).

(10) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee of any of these entities.

(11) "Sell" means to sell, to hold for sale, offer for sale, handle, or to use as inducement for the sale of another article or product.

(12) "Noxious weed" means a living stage, including, but not limited to, seeds and reproductive parts, of a parasitic or other plant of a kind that presents a threat to Washington agriculture or environment.

(13) "Regulated article" means a plant or plant product, bees or beekeeping equipment, noxious weed or other articles or equipment capable of harboring or transporting plant or bee pests or noxious weeds that is specifically addressed in rules or quarantines adopted under this chapter.

(14) "Owner" means the person having legal ownership, possession, or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, or their agent.

(15) "Nuisance" means a plant, or plant part, apiary, or property found in a commercial area on which is found a pest, pathogen, or disease that is a source of infestation to other properties.

(16) "Bees" means ~~((honey-producing insects of the species *apis mellifera* and includes the adults, eggs, larvae, pupae, and other immature stages of))~~ adult insects, eggs, larvae, pupae, or other immature stages of the species *Apis mellifera*.

(17) "Bee pests" means a mite, other parasite, or disease that causes injury to bees and those honey bees generally recognized to have undesirable behavioral characteristics such as or as found in Africanized honey bees.

(18) "Biological control" means the use by humans of living organisms to control or suppress undesirable animals and plants; the action of parasites, predators, or pathogens on a host or prey population to produce a lower general equilibrium than would prevail in the absence of these agents.

(19) "Biological control agent" means a parasite, predator, or pathogen intentionally released, by humans, into a target host or prey population with the intent of causing population reduction of that host or prey.

(20) "Emergency" means a situation where there is an imminent danger of an infestation of plant pests or disease that seriously threatens the state's agricultural or horticultural industries or environment and that cannot be adequately addressed with normal procedures or existing resources.

NEW SECTION. Sec. 7. The following sections are recodified within chapter 15.60 RCW in the following order:

RCW 15.60.005
RCW 15.60.010
RCW 15.60.050
RCW 15.60.043
RCW 15.60.040
RCW 15.60.170
RCW 15.60.180
RCW 15.60.190
RCW 15.60.210
RCW 15.60.220
RCW 15.60.900

NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:

- (1) RCW 15.60.007 (Industry apiary program) and 1994 c 178 s 2, 1993 c 89 s 2, & 1988 c 4 s 14;
- (2) RCW 15.60.015 (Bee pests—Control—Quarantine) and 1993 c 89 s 4, 1988 c 4 s 2, 1977 ex.s. c 362 s 2, & 1961 c 11 s 15.60.015;
- (3) RCW 15.60.020 (Abandoned hives—Impoundment) and 1993 c 89 s 5, 1988 c 4 s 3, 1975-'76 2nd ex.s. c 34 s 17, & 1961 c 11 s 15.60.020;
- (4) RCW 15.60.025 (Specific rule-making authority) and 1993 c 89 s 6, 1988 c 4 s 4, & 1977 ex.s. c 362 s 8;
- (5) RCW 15.60.030 (Bringing bees or equipment into state—Requirements) and 1993 c 89 s 7, 1988 c 4 s 5, 1981 c 296 s 7, 1977 ex.s. c 362 s 3, 1965 c 44 s 1, & 1961 c 11 s 15.60.030;
- (6) RCW 15.60.042 (Request of department services) and 1993 c 89 s 9 & 1988 c 4 s 7;
- (7) RCW 15.60.100 (Director's powers) and 1993 c 89 s 12, 1988 c 4 s 10, 1981 c 296 s 10, 1977 ex.s. c 362 s 7, & 1961 c 11 s 15.60.100;
- (8) RCW 15.60.110 (Access and entry by director) and 1993 c 89 s 13, 1988 c 4 s 11, 1977 ex.s. c 362 s 6, & 1961 c 11 s 15.60.110;
- (9) RCW 15.60.120 (Queen bee rearing apiaries) and 1993 c 89 s 14, 1988 c 4 s 12, 1981 c 296 s 11, & 1961 c 11 s 15.60.120;
- (10) RCW 15.60.140 (Africanized honey bees) and 1993 c 89 s 15, 1988 c 4 s 13, 1981 c 296 s 12, & 1961 c 11 s 15.60.140;

- (11) RCW 15.60.150 (Unlawful acts enumerated) and 1993 c 89 s 16, 1981 c 296 s 13, & 1961 c 11 s 15.60.150; and
(12) RCW 15.60.230 (Injunction) and 1993 c 89 s 19.

NEW SECTION. Sec. 9. This act takes effect June 30, 2001.

Passed the House March 6, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 101

[Substitute House Bill 3076]

TRANSPORTATION CERTIFICATION PROGRAMS

AN ACT Relating to a transportation certification program; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) It is the intent of the legislature to encourage the development of creative programs that streamline project permit processes, reduce costs of program implementation, and increase environmental benefits and compliance.

(2) The environmental affairs office of the department of transportation, in coordination with the department of ecology, the department of fish and wildlife, and representatives from cities and counties, shall convene a work group to evaluate and assess existing transportation certification programs for applicability to the environmental permit streamlining process. The work group will consider, but is not limited to, technical expertise requirements, evaluation criteria, compliance mechanisms, monitoring requirements, audit functions of external agencies, enforcement capacity, and reporting requirements. Cost-benefit analysis of the proposed program should be included. The work group shall present its report to the legislature by December 1, 2000.

(3) This section expires December 31, 2000.

Passed the House February 14, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 102

[Substitute House Bill 2766]

RECREATIONAL VEHICLES

AN ACT Relating to recreational vehicles; and amending RCW 46.44.030.

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

Sec. 1. RCW 46.44.030 and 1995 c 26 s 1 are each amended to read as follows:

It is unlawful for any person to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of forty feet. This restriction does not apply to (1) a municipal transit vehicle, (2) auto stage, private carrier bus ~~((or))~~, school bus, or motor home 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 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.

Passed the House February 10, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 103

[Substitute House Bill 2398]

TAXES—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to tax statutes; amending RCW 82.03.140, 82.03.150, 82.03.160, 82.03.180, 82.04.297, 82.04.340, 82.04.4452, 82.08.0291, 82.12.820, 82.14.360, 82.18.040, 82.34.050, 82.36.020, 82.45.060, 82.46.021, 82.46.030, 82.49.030, 82.62.090, 82.80.020, 82.80.050, 84.26.080, 84.34.065, 84.36.080, 84.36.379, 84.38.100, 84.38.120, 84.40.405, 84.52.0502, and 84.68.010; reenacting RCW 82.36.130; and repealing RCW 82.34.070, 84.56.190, 84.33.042, 84.33.043, 84.33.044, and 84.33.045.

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

Sec. 1. RCW 82.03.140 and 1988 c 222 s 4 are each amended to read as follows:

In all appeals over which the board has jurisdiction under RCW 82.03.130, a party taking an appeal may elect either a formal or an informal hearing, such election to be made according to rules of practice and procedure to be promulgated by the board: PROVIDED, That nothing shall prevent the assessor or taxpayer, as a party to an appeal pursuant to RCW 84.08.130, within twenty days from the date of the receipt of the notice of appeal, from filing with the clerk of the board notice of intention that the hearing be a formal one: PROVIDED, HOWEVER, That nothing herein shall be construed to modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal under RCW 82.03.130(~~(5)~~) (1)(e), the director of revenue may, within ten days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to chapter 34.05 RCW. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

EXPLANATORY NOTE

RCW 82.03.130 was amended by 1998 c 54 s 1, changing subsection (5) to subsection (1)(e).

Sec. 2. RCW 82.03.150 and 1988 c 222 s 5 are each amended to read as follows:

In all appeals involving an informal hearing, the board or its tax referees shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies by chapter 34.05 RCW. The board, or its tax referees, shall also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(~~(2)~~) (1)(b) the board or any member thereof may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board or any member thereof may deem necessary or appropriate.

EXPLANATORY NOTE

RCW 82.03.130 was amended by 1998 c 54 s 1, changing subsection (2) to subsection (1)(b).

Sec. 3. RCW 82.03.160 and 1989 c 175 s 175 are each amended to read as follows:

In all appeals involving a formal hearing the board or its tax referees shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter 34.05 RCW; and the board, and each member thereof, or its tax referees, shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings. The board, or its tax referees, shall also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130~~((2))~~ (1)(b), the board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board, or any member thereof, may deem necessary or appropriate: PROVIDED, HOWEVER, That any communication, oral or written, from the staff of the director to the board or its tax referees shall be presented only in open hearing.

EXPLANATORY NOTE

RCW 82.03.130 was amended by 1998 c 54 s 1, changing subsection (2) to subsection (1)(b).

Sec. 4. RCW 82.03.180 and 1989 c 175 s 176 are each amended to read as follows:

Judicial review of a decision of the board of tax appeals shall be de novo in accordance with the provisions of RCW 82.32.180 or 84.68.020 as applicable except when the decision has been rendered pursuant to a formal hearing elected under RCW 82.03.140 or 82.03.190, in which event judicial review may be obtained only pursuant to RCW 34.05.510 through 34.05.598: PROVIDED, HOWEVER, That nothing herein shall be construed to modify the rights of a taxpayer conferred by RCW 82.32.180 and 84.68.020 to sue for tax refunds: AND PROVIDED FURTHER, That no review from a decision made pursuant to RCW 82.03.130(1)(a) may be obtained by a taxpayer unless within the petition period provided by RCW 34.05.542 the taxpayer shall have first paid in full the contested tax, together with all penalties and interest thereon, if any. The director of revenue shall have the same right of review from a decision made pursuant to RCW 82.03.130(1)(a) as does a taxpayer; and the director of revenue and all parties to an appeal under RCW 82.03.130~~((5))~~ (1)(e) shall have the right of review from a decision made pursuant to RCW 82.03.130~~((5))~~ (1)(e).

EXPLANATORY NOTE

RCW 82.03.130 was amended by 1998 c 54 s 1, changing subsection (1) to subsection (1)(a) and subsection (5) to subsection (1)(e).

Sec. 5. RCW 82.04.297 and 1997 c 304 s 4 are each amended to read as follows:

(1) The provision of internet services is ~~((a selected business service activity and))~~ subject to tax under RCW 82.04.290~~((1)), but if RCW 82.04.055 is repealed~~

then the provision of internet services is taxable under the general service business and occupation tax classification of RCW 82.04.290)) (2).

(2) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

(3) "Internet service" means a service that includes computer processing applications, provides the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical subnetwork called the world wide web.

EXPLANATORY NOTE

RCW 82.04.290 was amended by 1997 c 7 s 2, deleting subsection (1) and RCW 82.04.055 was repealed by 1997 c 7 s 5. The "general service business and occupation tax classification" became RCW 82.04.290(2).

Sec. 6. RCW 82.04.340 and 1988 c 19 s 4 are each amended to read as follows:

This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the ((state boxing commission)) department of licensing.

EXPLANATORY NOTE

The "state boxing commission" was redesignated the "state professional athletic commission" by 1989 c 127, and was subsequently abolished and powers and duties transferred to the department of licensing pursuant to 1993 c 278.

Sec. 7. RCW 82.04.4452 and 1997 c 7 s 4 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for each person whose research and development spending during the year in which the credit is claimed exceeds 0.92 percent of the person's taxable amount during the same calendar year.

(2) The credit is equal to the greater of the amount of qualified research and development expenditures of a person or eighty percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development, multiplied by the rate provided in RCW 82.04.260((6)) (3) in the case of a nonprofit corporation or nonprofit association engaging within this state in research and development, and the rate provided in RCW 82.04.290(2) for every other person.

(3) Any person entitled to the credit provided in subsection (2) of this section as a result of qualified research and development conducted under contract may

assign all or any portion of the credit to the person contracting for the performance of the qualified research and development.

(4) The credit, including any credit assigned to a person under subsection (3) of this section, shall be taken against taxes due for the same calendar year in which the qualified research and development expenditures are incurred. The credit, including any credit assigned to a person under subsection (3) of this section, for each calendar year shall not exceed the lesser of two million dollars or the amount of tax otherwise due under this chapter for the calendar year.

(5) Any person taking the credit, including any credit assigned to a person under subsection (3) of this section, whose research and development spending during the calendar year in which the credit is claimed fails to exceed 0.92 percent of the person's taxable amount during the same calendar year shall be liable for payment of the additional taxes represented by the amount of credit taken together with interest, but not penalties. Interest shall be due at the rate provided for delinquent excise taxes retroactively to the date the credit was taken until the taxes are paid. Any credit assigned to a person under subsection (3) of this section that is disallowed as a result of this section may be taken by the person who performed the qualified research and development subject to the limitations set forth in subsection (4) of this section.

(6) Any person claiming the credit, and any person assigning a credit as provided in subsection (3) of this section, shall file an affidavit form prescribed by the department which shall include the amount of the credit claimed, an estimate of the anticipated qualified research and development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe.

(7) A person claiming the credit shall agree to supply the department with information necessary to measure the results of the tax credit program for qualified research and development expenditures.

(8) The department shall use the information required under subsection (7) of this section to perform three assessments on the tax credit program authorized under this section. The assessments will take place in 1997, 2000, and 2003. The department shall prepare reports on each assessment and deliver their reports by September 1, 1997, September 1, 2000, and September 1, 2003. The assessments shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(9) For the purpose of this section:

(a) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under rules adopted by the department, benefits,

supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(b) "Qualified research and development" shall have the same meaning as in RCW 82.63.010.

(c) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(d) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's combined excise tax returns during the year in which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(10) This section (~~shall~~) expires December 31, 2004.

EXPLANATORY NOTE

RCW 82.04.260 was amended by 1998 c 312 s 5, changing subsection (6) to subsection (3).

Sec. 8. RCW 82.08.0291 and 1994 c 85 s 1 are each amended to read as follows:

The tax imposed by RCW 82.08.020 shall not apply to the sale of amusement and recreation services, or personal services specified in RCW 82.04.050(3)(~~h~~) (g), by a nonprofit youth organization, as defined in RCW 82.04.4271, to members of the organization; nor shall the tax apply to physical fitness classes provided by a local government.

EXPLANATORY NOTE

RCW 82.04.050 was amended by 1996 c 148 s 1, changing subsection (3)(h) to subsection (3)(g).

Sec. 9. RCW 82.12.820 and 1997 c 450 s 3 are each amended to read as follows:

(1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators, and retailers who own or operate distribution centers, and who have paid the tax levied under RCW 82.12.020 on:

(a) Material-handling equipment and racking equipment; or

(b) Materials incorporated in the construction of a warehouse or grain elevator, are eligible for an exemption on tax paid in the form of a remittance or credit against tax owed. The amount of the remittance or credit is computed under subsection (2) of this section and is based on the state share of use tax.

(2)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.12.020 to the

department. The person may then apply to the department for remittance of all or part of the tax paid under RCW 82.12.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction materials, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses, if applicable; and construction invoices and documents.

(c) The department shall on a quarterly basis remit or credit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(3) Warehouse, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.61, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Materials incorporated in warehouses and grain elevators upon which construction was initiated prior to May 20, 1997, are not eligible for a remittance under this section.

(4) The lessor or owner of the warehouse or grain elevator is not eligible for a remittance or credit under this section unless the underlying ownership of the warehouse or grain elevator and material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the exemption to the lessee in the form of reduced rent payments.

(5) The definitions in RCW 82.08.820 apply to this section.

EXPLANATORY NOTE

The language being added appears to have been inadvertently removed in the drafting process. Compare with RCW 82.08.820(1).

Sec. 10. RCW 82.14.360 and 1995 3rd sp.s. c 1 s 201 are each amended to read as follows:

(1) The legislative authority of a county with a population of one million or more may impose a special stadium sales and use tax upon the retail sale or use within the county by restaurants, taverns, and bars of food and beverages that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax shall not exceed five-tenths 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. The tax imposed under this subsection is in addition to any other taxes authorized by law and shall not be credited against any other tax imposed upon the same taxable event. As used in this section, "restaurant" does not include grocery stores, mini-markets, or convenience stores.

(2) The legislative authority of a county with a population of one million or more may impose a special stadium sales and use tax upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax shall not exceed two percent of the selling price in the case of a sales tax, or rental value of the vehicle in the case of a use tax. The tax imposed under this subsection is in addition to any other taxes authorized by law and shall not be credited against any other tax imposed upon the same taxable event.

(3) The revenue from the taxes imposed under this section shall be used for the purpose of principal and interest payments on bonds, issued by the county, to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium. Revenues from the taxes authorized in this section may be used for design and other preconstruction costs of the baseball stadium until bonds are issued for the baseball stadium. The county shall issue bonds, in an amount determined to be necessary by the public facilities district, for the district to acquire, construct, own, and equip the baseball stadium. The county shall have no obligation to issue bonds in an amount greater than that which would be supported by the tax revenues under this section, RCW 82.14.0485, and 36.38.010(~~(3)~~) (4) (a) and (b). If the revenue from the taxes imposed under this section exceeds the amount needed for such principal and interest payments in any year, the excess shall be used solely:

(a) For early retirement of the bonds issued for the baseball stadium; and

(b) If the revenue from the taxes imposed under this section exceeds the amount needed for the purposes in (a) of this subsection in any year, the excess shall be placed in a contingency fund which may only be used to pay unanticipated capital costs on the baseball stadium, excluding any cost overruns on initial construction.

(4) The taxes authorized under this section shall not be collected after June 30, 1997, unless the county executive has certified to the department of revenue that a professional major league baseball team has made a binding and legally enforceable contractual commitment to:

(a) Play at least ninety percent of its home games in the stadium for a period of time not shorter than the term of the bonds issued to finance the initial construction of the stadium;

(b) Contribute forty-five million dollars toward the reasonably necessary preconstruction costs including, but not limited to architectural, engineering, environmental, and legal services, and the cost of construction of the stadium, or to any associated public purpose separate from bond-financed property, including without limitation land acquisition, parking facilities, equipment, infrastructure, or

other similar costs associated with the project, which contribution shall be made during a term not to exceed the term of the bonds issued to finance the initial construction of the stadium. If all or part of the contribution is made after the date of issuance of the bonds, the team shall contribute an additional amount equal to the accruing interest on the deferred portion of the contribution, calculated at the interest rate on the bonds maturing in the year in which the deferred contribution is made. No part of the contribution may be made without the consent of the county until a public facilities district is created under chapter 36.100 RCW to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium. To the extent possible, contributions shall be structured in a manner that would allow for the issuance of bonds to construct the stadium that are exempt from federal income taxes; and

(c) Share a portion of the profits generated by the baseball team from the operation of the professional franchise for a period of time equal to the term of the bonds issued to finance the initial construction of the stadium, after offsetting any losses incurred by the baseball team after the effective date of chapter 14, Laws of 1995 1st sp. sess. Such profits and the portion to be shared shall be defined by agreement between the public facilities district and the baseball team. The shared profits shall be used to retire the bonds issued to finance the initial construction of the stadium. If the bonds are retired before the expiration of their term, the shared profits shall be paid to the public facilities district.

(5) No tax may be collected under this section before January 1, 1996. Before collecting the taxes under this section or issuing bonds for a baseball stadium, the county shall create a public facilities district under chapter 36.100 RCW to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium.

(6) The county shall assemble such real property as the district determines to be necessary as a site for the baseball stadium. Property which is necessary for this purpose that is owned by the county on October 17, 1995, shall be contributed to the district, and property which is necessary for this purpose that is acquired by the county on or after October 17, 1995, shall be conveyed to the district.

(7) The proceeds of any bonds issued for the baseball stadium shall be provided to the district.

(8) As used in this section, "baseball stadium" means "baseball stadium" as defined in RCW 82.14.0485.

(9) The taxes imposed under this section shall expire when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the taxes are first collected.

EXPLANATORY NOTE

RCW 36.38.010 was amended by 1997 c 220 s 301, changing subsection (3)(a) and (b) to subsection (4)(a) and (b).

Sec. 11. RCW 82.18.040 and 1989 c 431 s 85 are each amended to read as follows:

Taxes collected under this chapter shall be held in trust until paid to the state. ~~((Except for taxes received under RCW 82.18.100;))~~ Taxes ~~((so))~~ received by the state shall be deposited in the public works assistance account created in RCW 43.155.050. Any person collecting the tax who appropriates or converts the tax collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. If a taxpayer fails to pay the tax imposed by this chapter to the person charged with collection of the tax and the person charged with collection fails to pay the tax to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the tax.

The tax shall be due from the taxpayer within twenty-five days from the date the taxpayer is billed by the person collecting the tax.

The tax shall be due from the person collecting the tax at the end of the tax period in which the tax is received from the taxpayer. If the taxpayer remits only a portion of the total amount billed for taxes, consideration, and related charges, the amount remitted shall be applied first to payment of the solid waste collection tax and this tax shall have priority over all other claims to the amount remitted.

EXPLANATORY NOTE

RCW 82.18.100 expired July 1, 1995.

Sec. 12. RCW 82.34.050 and 1975 1st ex.s. c 158 s 1 are each amended to read as follows:

(1) The original acquisition of a facility by the holder of a certificate shall be exempt from sales tax imposed by chapter 82.08 RCW and use tax imposed by chapter 82.12 RCW when the due date for payment of such taxes is subsequent to the effective date of the certificate: PROVIDED, That the exemption of this section shall not apply to servicing, maintenance, repairs, and replacement of parts after a facility is complete and placed in operation. Sales and use taxes paid by a holder of a certificate with respect to expenditures incurred for acquisition of a facility prior to the issuance of a certificate covering such facility may be claimed as a tax credit as provided in subsection (2) of this section.

(2) Subsequent to July 30, 1967 the holder of the certificate may, in lieu of accepting the tax exemption provided for in this section, elect to take a tax credit in the total amount of the exemption for the facility covered by such certificate against any future taxes to be paid pursuant to chapters 82.04, 82.12 and 82.16 RCW ~~((: PROVIDED, That on and after July 30, 1967 if such person elects to take a tax credit for a facility under this subsection he may not take further credit under RCW 82.04.435))~~.

EXPLANATORY NOTE

RCW 82.04.435 was decodified pursuant to 1997 c 156 s 10.

Sec. 13. RCW 82.36.020 and 1998 c 176 s 7 are each amended to read as follows:

(1) There is hereby levied and imposed upon motor vehicle fuel users a tax at the rate computed in the manner provided in RCW 82.36.025 on each gallon of motor vehicle fuel.

(2) The tax imposed by subsection (1) of this section is imposed when any of the following occurs:

(a) Motor vehicle fuel is removed in this state from a terminal if the motor vehicle fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;

(b) Motor vehicle fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;

(c) Motor vehicle fuel enters into this state for sale, consumption, use, or storage if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Motor vehicle fuel is removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the motor vehicle fuel;

(e) Blended motor vehicle fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended motor vehicle fuel subject to the tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of previously taxed motor vehicle fuel used to produce the blended motor vehicle fuel.

(3) The proceeds of the motor vehicle fuel excise tax (~~collected after the deductions for payments and expenditures as provided in RCW 46.68.090~~) shall be distributed as provided in RCW (~~46.68.100~~) 46.68.090.

EXPLANATORY NOTE

RCW 46.68.100 was repealed by 1999 sp.s. c 1 s 618.

Sec. 14. RCW 82.36.130 and 1998 c 311 s 11 and 1998 c 176 s 24 are each reenacted to read as follows:

If any licensee is in default for more than ten days in the payment of any excise taxes or penalties thereon, the director shall issue a warrant directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the goods and chattels of the licensee, without exemption, found within the sheriff's jurisdiction, for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant, and to return such warrant to the director and to pay the director the money collected by virtue thereof within the time to be therein specified, which shall not be less than twenty nor more than sixty days from the date of the warrant. The sheriff to whom the warrant is directed shall proceed upon it in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against goods and

chattels upon judgment by a court of record and shall be entitled to the same fees for the sheriff's services to be collected in the same manner.

EXPLANATORY NOTE

RCW 82.36.130 was amended twice during the 1998 legislative session, each without reference to the other. These amendments have been merged in a manner that reflects the intent of both. The effect of 1998 c 176 s 24 was to provide gender neutral references and update statutory language which can be easily merged, either in substance or in effect, with the 1998 c 311 s 11 changes to the same section.

Sec. 15. RCW 82.45.060 and 1987 c 472 s 14 are each amended to read as follows:

~~((1))~~ There is imposed an excise tax upon each sale of real property at the rate of one and twenty-eight one-hundredths percent of the selling price. An amount equal to seven and seven-tenths percent of the proceeds of this tax to the state treasurer shall be deposited in the public works assistance account created in RCW 43.155.050.

~~((2) There is imposed an additional excise tax through June 30, 1989, upon each sale of real property at the rate of six one-hundredths of one percent of the selling price. The tax imposed under this subsection shall be deposited in the conservation area account under RCW 79.71.110.))~~

EXPLANATORY NOTE

Subsection (2), by its own words, is obsolete.

Sec. 16. RCW 82.46.021 and 1983 c 99 s 3 are each amended to read as follows:

Any referendum petition to repeal a county or city ordinance imposing a tax or altering the rate of the tax authorized under RCW 82.46.010~~((2))~~ (3) shall be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or tax rate increase being imposed and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form shall contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted,

the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in RCW 29.13.010 as determined by the county legislative authority or city council, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

After April 22, 1983, the referendum procedure provided for in this section shall be the exclusive method for subjecting any county or city ordinance imposing a tax or increasing the rate under RCW 82.46.010~~((2))~~ (3) to a referendum vote.

Any county or city tax authorized under RCW 82.46.010~~((2))~~ (3) that has been imposed prior to April 22, 1983, is not subject to the referendum procedure provided for in this section.

EXPLANATORY NOTE

RCW 82.46.010 was amended by 1992 c 221 s 1, changing subsection (2) to subsection (3).

Sec. 17. RCW 82.46.030 and 1992 c 221 s 2 are each amended to read as follows:

(1) The county treasurer shall place one percent of the proceeds of the taxes imposed under this chapter in the county current expense fund to defray costs of collection.

(2) The remaining proceeds from the county tax under RCW 82.46.010~~((+))~~ (2) shall be placed in a county capital improvements fund. The remaining proceeds from city or town taxes under RCW 82.46.010~~((+))~~ (2) shall be distributed to the respective cities and towns monthly and placed by the city treasurer in a municipal capital improvements fund.

(3) This section does not limit the existing authority of any city, town, or county to impose special assessments on property specially benefited thereby in the manner prescribed by law.

EXPLANATORY NOTE

RCW 82.46.010(1) was renumbered RCW 82.46.010(2) by 1992 c 221 s 1.

Sec. 18. RCW 82.49.030 and 1991 sp.s. c 16 s 925 are each amended to read as follows:

(1) The excise tax imposed under this chapter is due and payable to the department of licensing or its agents at the time of registration of a vessel. The department of licensing shall not issue or renew a registration for a vessel until the tax is paid in full.

(2) The excise tax collected under this chapter shall be deposited in the general fund.

~~((3) For the 1993-95 fiscal biennium, the watercraft excise tax revenues exceeding five million dollars in each fiscal year, but not exceeding six million dollars, may, subject to appropriation by the legislature, be used for the purposes specified in RCW 88.12.450.))~~

EXPLANATORY NOTE

Subsection (3), by its own words, is obsolete.

Sec. 19. RCW 82.62.090 and 1999 c 311 s 304 are each amended to read as follows:

(1) A person is not eligible to receive a credit under this chapter if the person is receiving credit for the same position under (~~section 303 of this act~~) RCW 82.04.4456 or (~~RCW~~) 82.04.44525.

(2) This section expires December 31, 2003.

EXPLANATORY NOTE

The reference to "section 303 of this act" appears to be erroneous. Section 302 of this act was apparently intended which was codified as RCW 82.04.4456.

Sec. 20. RCW 82.80.020 and 1998 c 281 s 1 are each amended to read as follows:

(1) The legislative authority of a county, or subject to subsection (7) of this section, a qualifying city or town located in a county that has not imposed a fifteen-dollar fee under this section, may fix and impose an additional fee, not to exceed fifteen dollars per vehicle, for each vehicle that is subject to license fees under RCW 46.16.060 and for each vehicle that is subject to RCW 46.16.070 with an unladen weight of six thousand pounds or less, and that is determined by the department of licensing to be registered within the boundaries of the county.

(2) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(3) The proceeds of this fee shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(4) A county or qualifying city or town imposing this fee or initiating an exemption process shall delay the effective date at least six months from the date the ordinance is enacted to allow the department of licensing to implement administration and collection of or exemption from the fee.

(5) The legislative authority of a county or qualifying city or town may develop and initiate an exemption process of the fifteen dollar fee for the registered owners of vehicles residing within the boundaries of the county or qualifying city or town: (a) Who are sixty-one years old or older at the time payment of the fee is due and whose household income for the previous calendar year is less than an amount prescribed by the county or qualifying city or town legislative authority; or (b) who have a physical disability.

(6) The legislative authority of a county or qualifying city or town shall develop and initiate an exemption process of the fifteen-dollar fee for vehicles

registered within the boundaries of the county that are licensed under RCW 46.16.374.

(7) For purposes of this section, a "qualifying city or town" means a city or town residing within a county having a population of greater than seventy-five thousand in which is located all or part of a national monument. A qualifying city or town may impose the fee authorized in subsection (1) of this section subject to the following conditions and limitations:

(a) The city or town may impose the fee only if authorized to do so by a majority of voters voting at a general or special election on a proposition for that purpose. At a minimum, the ballot measure shall contain: (i) A description of the transportation project proposed for funding, properly identified by mileposts or other designations that specify the project parameters; (ii) the proposed number of months or years necessary to fund the city or town's share of the project cost; and (iii) the amount of fee to be imposed for the project.

(b) The city or town may not impose a fee that, if combined with the county fee, exceeds fifteen dollars. If a county imposes or increases a fee under this section that, if combined with the fee imposed by a city or town, exceeds fifteen dollars, the city or town fee shall be reduced or eliminated as needed so that in no city or town does the combined fee exceed fifteen dollars. All revenues from county-imposed fees shall be distributed as called for in RCW ~~((82.80.020))~~ 82.80.080.

(c) Any fee imposed by a city or town under this section shall expire at the end of the term of months or years provided in the ballot measure, or when the city or town's bonded indebtedness on the project is retired, whichever is sooner.

(8) The fee imposed under subsection (7) of this section shall apply only to renewals and shall not apply to ownership transfer transactions.

EXPLANATORY NOTE

RCW 82.80.080 refers to the distribution of taxes and was apparently intended.

Sec. 21. RCW 82.80.050 and 1991 c 141 s 2 are each amended to read as follows:

A city or town electing to own, construct, maintain, operate, and preserve its streets as a separate street utility may levy periodic charges for the use or availability of the streets in a total annual amount of up to fifty percent of the actual costs for maintenance, operation, and preservation of facilities under the jurisdiction of the street utility. The rates charged for the use must be uniform for the same class of service and all business and residential properties must be subject to the utility charge. Charges imposed on businesses shall be measured solely by the number of employees and shall not exceed the equivalent of two dollars per full-time equivalent employee per month. Charges imposed against owners or occupants of residential property shall not exceed two dollars per month per housing unit as defined in RCW 35.95.040. Charges authorized in this section shall not be imposed against owners of property: (1) Exempt under RCW

84.36.010; (2) exempt from the leasehold tax under chapter 82.29A RCW; or (3) used for nonprofit or sectarian purposes, which if said property were owned by such organization would qualify for exemption under chapter 84.36 RCW. The charges shall not be computed on the basis of an ad valorem charge on the underlying real property and improvements. This section shall not be used as a basis to directly or indirectly charge transportation impact fees or mitigation fees of any kind against new development. A city or town may contract with any other utility or local government to provide for billing and collection of the street utility charges.

In classifying service furnished within the general categories of business and residential, the city or town legislative authority may in its discretion consider any or all of the following factors: The difference in cost of service to the various users or traffic generators; location of the various users or traffic generators within the city or town; the difference in cost of maintenance, operation, construction, repair, and replacement of the various parts of the enterprise and facility; the different character of the service furnished to various users or traffic generators within the city or town; the size and quality of the street service furnished; the time of use or traffic generation; capital contributions made to the facility including but not limited to special assessments; and any other matters that present a reasonable difference as a ground for distinction, or the entire category of business or residential may be established as a single class. The city or town may reduce or exempt charges on residential properties to the extent of their occupancy by low-income senior citizens and (~~low-income disabled citizens~~) other low-income citizens as provided in RCW 74.38.070(1), or to the extent of their occupancy by the needy or infirm.

The charges shall be charges against the property and the use thereof and shall become liens and be enforced in the same manner as rates and charges for the use of systems of sewerage under chapter 35.67 RCW.

Any city or town ordinance or resolution creating a street utility must contain a provision granting to any business a credit against any street utility charge the full amount of any commuter or employer tax paid for transportation purposes by that business.

EXPLANATORY NOTE

The term "low-income disabled citizens" was changed to "other low-income citizens" by 1998 c 300 s 8.

Sec. 22. RCW 84.26.080 and 1999 c 233 s 19 are each amended to read as follows:

(1) When property has once been classified and valued as eligible historic property, it shall remain so classified and be granted the special valuation provided by RCW 84.26.070 for ten years or until the property is disqualified by:

- (a) Notice by the owner to the assessor to remove the special valuation;
- (b) Sale or transfer to an ownership making it exempt from property taxation;

or

(c) Removal of the special valuation by the assessor upon determination by the local review board that the property no longer qualifies as historic property or that the owner has failed to comply with the conditions established under RCW 84.26.050.

(2) The sale or transfer to a new owner or transfer by reason of death of a former owner to a new owner does not disqualify the property from the special valuation provided by RCW 84.26.070 if:

(a) The property continues to qualify as historic property; and

(b) The new owner files a notice of compliance with the assessor of the county in which the property is located. Notice of compliance forms shall be prescribed by the state department of revenue and supplied by the county assessor. The notice shall contain a statement that the new owner is aware of the special valuation and of the potential tax liability involved when the property ceases to be valued as historic property under this chapter. The signed notice of compliance shall be attached to the real estate excise tax affidavit provided for in RCW ~~((82.45.120))~~ 82.45.150. If the notice of compliance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to RCW 84.26.090 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 specially valued historic property for filing or recording unless the new owner has signed the notice of compliance or the additional tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer.

(3) When the property ceases to qualify for the special valuation the owner shall immediately notify the state or local review board.

(4) Before the additional tax or penalty imposed by RCW 84.26.090 is levied, in the case of disqualification, the assessor shall notify the taxpayer by mail, return receipt requested, of the disqualification.

EXPLANATORY NOTE

RCW 82.45.120 was repealed by 1993 sp.s. c 25 s 512. RCW 82.45.150 refers to real estate excise tax affidavits.

Sec. 23. RCW 84.34.065 and 1998 c 320 s 8 are each amended to read as follows:

The true and fair value of farm and agricultural land ~~((including land classified under section 2, chapter 320, Laws of 1998;))~~ shall be determined by consideration of the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years, capitalized at indicative rates. The earning or productive capacity of farm and agricultural lands shall be the "net cash rental", capitalized at a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes. The current use value of land under RCW 84.34.020(2)(d) shall be established as: The prior year's average value of open space farm and agricultural land used in the county plus the value of land improvements such as septic, water, and power used to serve the residence. This

shall not be interpreted to require the assessor to list improvements to the land with the value of the land.

For the purposes of the above computation:

(1) The term "net cash rental" shall mean the average rental paid on an annual basis, in cash, for the land being appraised and other farm and agricultural land of similar quality and similarly situated that is available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for production of agricultural crops. There shall be allowed as a deduction from the rental received or computed any costs of crop production charged against the landlord if the costs are such as are customarily paid by a landlord. If "net cash rental" data is not available, the earning or productive capacity of farm and agricultural lands shall be determined by the cash value of typical or usual crops grown on land of similar quality and similarly situated averaged over not less than five years. Standard costs of production shall be allowed as a deduction from the cash value of the crops.

The current "net cash rental" or "earning capacity" shall be determined by the assessor with the advice of the advisory committee as provided in RCW 84.34.145, and through a continuing internal study, assisted by studies of the department of revenue. This net cash rental figure as it applies to any farm and agricultural land may be challenged before the same boards or authorities as would be the case with regard to assessed values on general property.

(2) The term "rate of interest" shall mean the rate of interest charged by the farm credit administration and other large financial institutions regularly making loans secured by farm and agricultural lands through mortgages or similar legal instruments, averaged over the immediate past five years.

The "rate of interest" shall be determined annually by a rule adopted by the department of revenue and such rule shall be published in the state register not later than January 1 of each year for use in that assessment year. The department of revenue determination may be appealed to the state board of tax appeals within thirty days after the date of publication by any owner of farm or agricultural land or the assessor of any county containing farm and agricultural land.

(3) The "component for property taxes" shall be a figure obtained by dividing the assessed value of all property in the county into the property taxes levied within the county in the year preceding the assessment and multiplying the quotient obtained by one hundred.

EXPLANATORY NOTE

Section 2, chapter 320, Laws of 1998 was vetoed by the governor.

Sec. 24. RCW 84.36.080 and 1998 c 335 s 5 are each amended to read as follows:

(1) All ships and vessels which are exempt from excise tax under ~~((subsection (2)-of))~~ RCW 82.49.020(2) and excepted from the registration requirements of ~~((subsection (10)-of))~~ RCW 88.02.030(9) shall be and are hereby made exempt from all ad valorem taxes, except taxes levied for any state purpose.

(2) All ships and vessels listed in the state or federal register of historical places are exempt from all ad valorem taxes.

EXPLANATORY NOTE

Makes a style change and RCW 88.02.030 was amended by 1997 c 83 s 1, changing subsection (10) to subsection (9).

Sec. 25. RCW 84.36.379 and 1980 c 185 s 3 are each amended to read as follows:

The legislature finds that the property tax exemption authorized by Article VII, section 10 of the state Constitution should be made available on the basis of a retired person's ability to pay property taxes. The legislature further finds that the best measure of a retired person's ability to pay taxes is that person's disposable income as defined in RCW 84.36.383(~~((6))~~).

EXPLANATORY NOTE

RCW 84.36.383 was amended by 1994 sp.s. c 8 s 2, changing subsection (6) to subsection (5). The new subsection reference will not be included since it is unnecessary. This will prevent incorrect references from occurring every time the subsection numbering in RCW 84.36.383 changes.

Sec. 26. RCW 84.38.100 and 1988 c 222 s 12 are each amended to read as follows:

Whenever a person's special assessment and/or real property tax obligation is deferred under the provisions of this chapter, the amount deferred and required to be paid pursuant to RCW 84.38.120 shall become a lien in favor of the state upon his or her property and shall have priority as provided in chapters 35.50 and 84.60 RCW: PROVIDED, That the interest of a mortgage or purchase contract holder who is required to cosign a declaration of deferral under RCW 84.38.090, shall have priority to said deferred lien. This lien may accumulate up to eighty percent of the amount of the claimant's equity value in said property and shall bear interest at the rate of eight percent per year from the time it could have been paid before delinquency until said obligation is paid: PROVIDED, That when taxes are deferred as provided in RCW (~~(84.64.030 or)~~) 84.64.050, the amount shall bear interest at the rate of eight percent per year from the date the declaration is filed until the obligation is paid. In the case of a mobile home, the department of licensing shall show the state's lien on the certificate of ownership for the mobile home. In the case of all other property, the department of revenue shall file a notice of the deferral with the county recorder or auditor.

EXPLANATORY NOTE

RCW 84.64.030 was repealed by 1991 c 245 s 42.

Sec. 27. RCW 84.38.120 and 1988 c 222 s 13 are each amended to read as follows:

After receipt of the notification from the county assessor of the amount of deferred special assessments and/or real property taxes the department shall pay,

from amounts appropriated for that purpose, to the treasurers of such municipal corporations said amounts, equivalent to the amount of special assessments and/or real property taxes deferred, to be distributed to the local improvement or taxing districts which levied the taxes so deferred: PROVIDED, That when taxes are deferred as provided in RCW ~~((84.64.030 or))~~ 84.64.050, the department shall pay to the treasurer of the county the amount equivalent to all taxes, foreclosure costs, interest, and penalties accrued to the date the declaration to defer is filed.

EXPLANATORY NOTE

RCW 84.64.030 was repealed by 1991 c 245 s 42.

Sec. 28. RCW 84.40.405 and 1985 c 7 s 156 are each amended to read as follows:

The department of revenue shall promulgate such rules and regulations, and prescribe such procedures as it deems necessary to carry out RCW ~~((82.04.444, 82.04.445,))~~ 84.36.470, 84.36.473, ~~((84.36.475,))~~ 84.36.477, ~~((84.09.080, and 84.52.015,))~~ and this section.

EXPLANATORY NOTE

RCW 82.04.444 and 82.04.445 were repealed by 1997 c 156 s 11 and RCW 84.09.080, 84.36.475, and 84.52.015 were repealed by 1989 c 378 s 40.

Sec. 29. RCW 84.52.0502 and 1988 c 274 s 9 are each amended to read as follows:

The department of revenue shall adopt such rules consistent with chapter 274, Laws of 1988 as shall be necessary or desirable to permit its effective administration. ~~((The rules shall provide how RCW 84.52.0501 shall apply to a taxing district that has received authorization to increase its levy according to RCW 84.52.100 and use the method that will be the least costly to all taxing districts involved.))~~

EXPLANATORY NOTE

RCW 84.52.0501 expired December 31, 1989, and RCW 84.52.100 was repealed by 1990 c 234 s 5.

Sec. 30. RCW 84.68.010 and 1972 ex.s. c 84 s 3 are each amended to read as follows:

Injunctions and restraining orders shall not be issued or granted to restrain the collection of any tax or any part thereof, or the sale of any property for the nonpayment of any tax or part thereof, except in the following cases:

- (1) Where the law under which the tax is imposed is void;
- (2) Where the property upon which the tax is imposed is exempt from taxation; or
- (3) Where the sale is a result of an error made by an officer or employee of the county, and the board of county commissioners or other legislative authority of the county ~~((has issued))~~ issues an order ~~((pursuant to the provisions of RCW 84.64.145)).~~

EXPLANATORY NOTE

RCW 84.64.145 was repealed by 1991 c 245 s 42.

NEW SECTION. Sec. 31. The following acts or parts of acts are each repealed:

- (1) RCW 82.34.070 (Credits accumulated prior to July 30, 1967, pursuant to RCW 82.04.435) and 1967 ex.s. c 139 s 7;
- (2) RCW 84.56.190 (Penalty for failure to notify assessor or pay tax) and 1961 c 15 s 84.56.190;
- (3) RCW 84.33.042 (Excise tax rate July 1, 1984, through June 30, 1985) and 1984 c 204 s 3;
- (4) RCW 84.33.043 (Excise tax rate July 1, 1985, through June 30, 1986) and 1984 c 204 s 4;
- (5) RCW 84.33.044 (Excise tax rate July 1, 1986, through June 30, 1987) and 1984 c 204 s 5; and
- (6) RCW 84.33.045 (Excise tax rate July 1, 1987, through June 30, 1988) and 1984 c 204 s 6.

EXPLANATORY NOTE

RCW 82.34.070 referred to tax credits provided in RCW 82.04.435 which was decodified pursuant to 1997 c 156 s 10. RCW 82.04.435 primarily addressed business activities occurring between 1964 and 1971. RCW 84.56.190 provided penalties for certain failures addressed in RCW 84.56.180 which was repealed by 1994 c 301 s 57. Therefore, RCW 84.56.190 is obsolete.

The repealers in subsections (3) through (6) are obsolete by their own words.

Passed the House January 31, 2000.
 Passed the Senate March 2, 2000.
 Approved by the Governor March 24, 2000.
 Filed in Office of Secretary of State March 24, 2000.

CHAPTER 104

[Substitute House Bill 2493]

SALES AND USE TAXES—EFFECTIVE DATES

AN ACT Relating to restricting the effective dates of sales and use tax changes for the purposes of simplification of tax collection; amending RCW 82.14.070; adding a new section to chapter 82.14 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.32 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds that retailers have an important role in the state's tax system by collecting sales or use tax from consumers and remitting it to the state. Frequent changes to the tax system place a burden on these businesses. To alleviate that burden and to improve the accuracy of tax collection,

it is the intent of the legislature to provide that changes to sales and use tax may be made four times a year and that the department of revenue be provided adequate time to give advance notice to retailers of any such change. Changes in sales and use tax rates that are the result of annexation are also restricted to this time period, for uniformity and simplification. Additionally, retailers who rely on technology developed and provided by the department of revenue, such as the department's geographic information system, to calculate tax rates shall be held harmless from errors resulting from such use.

NEW SECTION. Sec. 2. A new section is added to chapter 82.14 RCW to read as follows:

(1) A local sales and use tax change shall take effect (a) no sooner than seventy-five days after the department receives notice of the change and (b) only on the first day of January, April, July, or October.

(2) For the purposes of this section, "local sales and use tax change" means enactment or revision of local sales and use taxes under this chapter or any other statute, including changes resulting from referendum or annexation.

NEW SECTION. Sec. 3. A new section is added to chapter 82.08 RCW to read as follows:

A sales and use tax rate change under this chapter or chapter 82.12 RCW shall be imposed (1) no sooner than seventy-five days after its enactment into law and (2) only on the first day of January, April, July, or October.

NEW SECTION. Sec. 4. A new section is added to chapter 82.32 RCW to read as follows:

A person who collects and remits sales or use tax to the department and who calculates the tax using technology developed and provided by the department shall be held harmless and is not liable for the difference in amount due nor subject to penalties or interest in regards to rate calculation errors resulting from the proper use of such technology.

Sec. 5. RCW 82.14.070 and 1970 ex.s. c 94 s 10 are each amended to read as follows:

It is the intent of this chapter that any local sales and use tax adopted pursuant to this chapter be as consistent and uniform as possible with the state sales and use tax and with other local sales and use taxes adopted pursuant to this chapter. It is further the intent of this chapter that the local sales and use tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state sales or use tax upon the same taxable event. The rule making powers of the state department of revenue contained in RCW 82.08.060 and 82.32.300 shall be applicable to this chapter. The department shall, as soon as practicable, and with the assistance of the appropriate associations of county prosecutors and city attorneys, draft a model resolution and ordinance. ~~((No resolution or ordinance or any amendment thereto adopted pursuant to this chapter shall be effective, except upon the first day of a calendar month.))~~

NEW SECTION. Sec. 6. The code reviser shall, as appropriate, place cross-reference sections to sections 2 and 4 of this act in chapters 36.100, 81.100, 81.104, 82.08, 82.12, and 82.14 RCW.

NEW SECTION. Sec. 7. This act takes effect July 1, 2000.

Passed the House February 8, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 105

[House Bill 2515]

ESTATE TAX PENALTIES

AN ACT Relating to simplifying estate tax penalties; amending RCW 83.100.070; and providing an effective date.

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

Sec. 1. RCW 83.100.070 and 1997 c 136 s 1 are each amended to read as follows:

(1) Any tax due under this chapter which is not paid by the due date under RCW 83.100.060(1) shall bear interest at the rate of twelve percent per annum from the date the tax is due until the date of payment.

(2) Interest imposed under this section for periods after January 1, 1997, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year.

(3)(a) If the Washington return is not filed when due under RCW 83.100.050 and the person required to file the federal return voluntarily reports the filing and files both the state and federal estate tax returns with the department, no penalty is imposed on the person required to file the federal return.

(b) If the Washington return is not filed when due under RCW 83.100.050 and the person required to file the federal return does not file a return with the department before the department notifies the person in writing that the department has determined that the person has not filed a state estate tax return, the person required to file the federal return shall pay, in addition to interest, a penalty equal to five percent of the tax due for each month after the date the return is due until filed. However, in no instance may the penalty exceed the lesser of twenty-five percent of the tax due or one thousand five hundred dollars.

(c) If the department finds that a return due under this chapter has not been filed by the due date, and the delinquency was the result of circumstances beyond the control of the responsible person, the department shall waive or cancel any penalties imposed under this chapter with respect to the filing of such a tax return.

The department shall adopt rules for the waiver or cancellation of the penalties imposed by this section.

NEW SECTION. Sec. 2. This act takes effect July 1, 2000.

Passed the House February 10, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 106

[House Bill 2519]

EXCISE TAX

AN ACT Relating to simplifying the excise tax code through revising terminology, correcting mistakes, streamlining procedures, and deleting obsolete provisions; amending RCW 82.32.330, 82.14B.042, 82.14B.061, 82.49.010, 82.60.060, 82.60.080, 82.62.060, 82.60.049, 82.62.090, 82.63.045, 82.04.4456, and 82.04.4457; and providing an effective date.

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

Sec. 1. RCW 82.32.330 and 1998 c 234 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;

(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 other person may disclose any return or tax information.

(3) The foregoing, however, shall not prohibit the department of revenue 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 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 a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) 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;

(j) 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;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) 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~~) North American industry classification system or 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;

(m) 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; ~~((e))~~

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;
or

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property.

(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), (i), (j), or (n) 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, is guilty of a misdemeanor. 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.

Sec. 2. RCW 82.14B.042 and 1998 c 304 s 9 are each amended to read as follows:

(1) The state enhanced 911 excise tax imposed by this chapter must be paid by the subscriber to the local exchange company providing the switched access line, and each local exchange company shall collect from the subscriber the full amount of the tax payable. The state enhanced 911 excise tax required by this chapter to be collected by the local exchange company is deemed to be held in trust by the local exchange company until paid to the department. Any local exchange company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company fails to collect the state enhanced 911 excise tax or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company is personally liable to the state for the amount of the tax, unless the local exchange company has taken from the buyer in good faith a properly executed resale certificate under RCW 82.14B.200.

(3) The amount of tax, until paid by the subscriber to the local exchange company or to the department, constitutes a debt from the subscriber to the local exchange company. Any local exchange company that fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber who refuses to pay any tax due under this chapter is guilty of a misdemeanor. The state enhanced 911 excise tax required by this chapter to be collected by the local

exchange company must be stated separately on the billing statement that is sent to the subscriber.

(4) If a subscriber has failed to pay to the local exchange company the state enhanced 911 excise tax imposed by this chapter and the local exchange company has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber to pay the tax to the local exchange company, regardless of when the tax is collected by the department. ~~((For the sole purpose of applying the various provisions of chapter 82.32 RCW, the last day of the month following the tax period in which the tax liability accrued is to be considered as the due date of the tax))~~ Tax under this chapter is due as provided under RCW 82.14B.061.

Sec. 3. RCW 82.14B.061 and 1998 c 304 s 6 are each amended to read as follows:

(1) The department of revenue shall administer and shall adopt such rules as may be necessary to enforce and administer the state enhanced 911 excise tax imposed by this chapter. Chapter 82.32 RCW, with the exception of RCW 82.32.045, 82.32.145, and 82.32.380, applies to the administration, collection, and enforcement of the state enhanced 911 excise tax.

(2) The state enhanced 911 excise tax imposed by this chapter, along with reports and returns on forms prescribed by the department, are due ~~((monthly on or before the last day of the month following the month in which the tax liability accrues))~~ at the same time the taxpayer reports other taxes under RCW 82.32.045. If no other taxes are reported under RCW 82.32.045, the taxpayer shall remit tax on an annual basis in accordance with RCW 82.32.045.

(3) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. ~~((For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.))~~

(4) The state enhanced 911 excise tax imposed by this chapter is in addition to any taxes imposed upon the same persons under chapters 82.08 and 82.12 RCW.

***Sec. 4.** RCW 82.49.010 and 1999 c 277 s 8 are each amended to read as follows:

(1) An excise tax is imposed for the privilege of using a vessel upon the waters of this state, except vessels exempt under RCW 82.49.020. The annual amount of the excise tax is one-half of one percent of fair market value, as determined under this chapter, or five dollars, whichever is greater. Violation of this subsection is a misdemeanor.

(2)(a) A person who is required under chapter 88.02 RCW to register a vessel in this state and who registers the vessel in another state or foreign country and avoids the Washington watercraft taxes, violates this section and is liable for those taxes and a monetary penalty not less than one thousand dollars

but not more than ten thousand dollars for each violation. The department may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

(b) The penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due. The state patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue an action to recover the penalty upon such terms it deems proper and may ascertain the facts in a manner and under rules it deems proper. If the amount of the penalty is not paid to the state 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 any other county in which the violator resides or does business, to recover the penalty, administrative fees, and attorneys' fees. 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 for the license fraud task force.

(3) The excise tax upon a vessel registered for the first time in this state shall be imposed for a twelve-month period, including the month in which the vessel is registered, unless the director of licensing extends or diminishes vessel registration periods for the purpose of staggered renewal periods under RCW 88.02.050. A vessel is registered for the first time in this state when the vessel was not registered in this state for the immediately preceding registration year, or when the vessel was registered in another jurisdiction for the immediately preceding year. The excise tax on vessels required to be registered in this state on June 30, 1983, shall be paid by June 30, 1983.

**Sec. 4 was vetoed. See message at end of chapter.*

Sec. 5. RCW 82.60.060 and 1985 c 232 s 5 are each amended to read as follows:

(1) The recipient shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest shall not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

Sec. 6. RCW 82.60.080 and 1985 c 232 s 7 are each amended to read as follows:

The ~~((department of))~~ employment security department shall make, and certify to the department of revenue, all determinations of employment and wages ~~((required))~~ as requested by the department under this chapter.

Sec. 7. RCW 82.62.060 and 1986 c 116 s 19 are each amended to read as follows:

The employment security department shall make, and certify to the department of revenue, all determinations of employment and wages ~~((required))~~ requested by the department under this chapter.

Sec. 8. RCW 82.60.049 and 1999 c 164 s 304 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Eligible area" also means a designated community empowerment zone approved under RCW 43.63A.700 or a county containing a community empowerment zone.

(b) "Eligible investment project" also means an investment project in an eligible area as defined in this section.

(c) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire year.

(2) In addition to the provisions of RCW 82.60.040, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each seven hundred fifty thousand dollars of investment on which a deferral is requested; and

(b) The positions will be filled by persons who at the time of hire are residents of the community empowerment zone ~~((in which the project is located))~~. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to

establish that a person is a resident for the purposes of this section. The persons must be hired after the date the application is filed with the department.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

(4) The qualified employment position must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a person does not meet the requirements ~~((of this section))~~ for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

Sec. 9. RCW 82.62.090 and 1999 c 31 I s 304 are each amended to read as follows:

(1) A person is not eligible to receive a credit under this chapter if the person is receiving credit for the same position under ~~((section 303 of this act or))~~ RCW 82.04.44525 or 82.04.4456.

(2) This section expires December 31, 2003.

Sec. 10. RCW 82.63.045 and 1995 1st sp.s. c 3 s 13 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, taxes deferred under this chapter need not be repaid.

(2) If, on the basis of a report under RCW 82.63.020 or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes shall be immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

The department shall assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(3) Notwithstanding subsection (2) of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

Sec. 11. RCW 82.04.4456 and 1999 c 311 s 302 are each amended to read as follows:

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter for persons engaged in a rural county in the business of manufacturing software or programming, as those terms are defined in this section.

(2) A person who partially or totally relocates a business from one rural county to another rural county is eligible for any qualifying new jobs created as a result of the relocation but is not eligible to receive credit for the jobs moved from one county to the other.

(3)(a) To qualify for the credit, the qualifying activity of the person must be conducted in a rural county and the qualified employment position must be located in the rural county.

(b) If an activity is conducted both from a rural county and outside of a rural county, the credit is available if at least ninety percent of the qualifying activity (~~(takes place))~~ is conducted within a rural county. If the qualifying activity is a service taxable activity, the place where the work is performed is the place at which the activity is conducted.

(4)(a) The credit under this section shall equal one thousand dollars for each qualified employment position created after July 1, 1999, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to four years. The county must meet the definition of a rural county at the time the position is filled. If the county does not have a rural county status the following year or years, the position is still eligible for the remaining years if all other conditions are met.

(b) Credit may not be taken for hiring of persons into positions that exist before July 1, 1999. Credit is authorized for new employees hired for new positions created on or after July 1, 1999. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire. A business that is a sole proprietorship without any employees is equivalent to one employee position and this type of business is eligible to receive credit for one position.

(c) If a position is filled before July 1st, this position is eligible for the full yearly credit for that calendar year. If it is filled after June 30th, this position is eligible for half of the credit for that calendar year.

(d) A person that has engaged in qualifying activities in the rural county before August 1, 1999, qualifies for the credit under this section for positions created and filled after August 1, 1999.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes information relating to description of qualifying activity ~~((engaged))~~ conducted in the rural county and outside the rural county by the person as well as detailed records on positions and employees. ~~((The department shall, in consultation with a representative group of affected taxpayers, develop a method of segregating activity and related income so that those persons who engage in multiple activities can determine eligibility for credit under this section.))~~

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed shall be immediately due. The department shall assess interest, but not penalties, on the taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The credit under this section may be used against any tax due under this chapter, but in no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. A person is not eligible to receive a credit under this section if the person is receiving credit for the same position under chapter 82.62 RCW or RCW 82.04.44525 or is taking the credit under RCW 82.04.4457. No refunds may be granted for credits under this section.

(8) A person taking tax credits under this section shall make an annual report to the department. The report shall be in a letter form and shall include the following information: Number of positions for which credit is being claimed, type of position for which credit is being claimed, type of activity in which the person is engaged in the county, ~~((and))~~ how long the person has been located in the county, and taxpayer name and registration number. The report must be filed by January 30th of each year for which credit was claimed during the previous year. Failure to file a report will not result in the loss of eligibility under this section. However, the department, through its research division, shall contact taxpayers who have not filed the report and obtain the data from the taxpayer or assist the taxpayer in the filing of the report, so that the data and information necessary to measure the program's effectiveness is maintained.

(9) Transfer of ownership does not affect credit eligibility~~((:))~~. However, the successive credits ~~((is))~~ are available to the successor for remaining periods in the five years only if the eligibility conditions of this section are met.

(10) As used in this section:

(a) "Manufacturing" means the same as "to manufacture" under RCW 82.04.120. Manufacturing includes the activities of both manufacturers and processors for hire.

(b) "Programming" means the activities that involve the creation or modification of software, as that term is defined in this chapter, and that are taxable as a service under RCW 82.04.290(2) or as a retail sale under RCW 82.04.050.

(c) "Qualifying activity" means manufacturing of software or programming.

(d) "Qualified employment position" means a permanent full-time position doing programming of software or manufacturing of software. This excludes administrative, professional, service, executive, and other similar positions. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee. Full-time means a position for at least thirty-five hours a week.

(e) "Rural county" means a county with a population density of less than one hundred persons per square mile as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.

(f) "Software" has the same meaning as defined in RCW 82.04.215.

(11) No credit may be taken or accrued under this section on or after January 1, 2004.

(12) This section expires December 31, 2003.

Sec. 12. RCW 82.04.4457 and 1999 c 311 s 303 are each amended to read as follows:

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter for persons engaged in a rural county in the business of providing information technology help desk services to third parties.

(2) To qualify for the credit, the help desk services must be conducted from a rural county.

(3) The amount of the tax credit for persons engaged in the activity of providing information technology help desk services in rural counties shall be equal to one hundred percent of the amount of tax due under this chapter that is attributable to providing the services from the rural county. In order to qualify for the credit under this subsection, the county must meet the definition of rural county at the time the person begins to conduct qualifying business in the county.

(4) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. These records include information relating to description of activity engaged in a rural county by the person.

(5) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used is immediately due. The department shall assess interest, but not penalties, on the

credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(6) The credit under this section may be used against any tax due under this chapter, but in no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(7) A person taking tax credits under this section shall make an annual report to the department. The report shall be in a letter form and shall include the following information: Type of activity in which the person is engaged in the county, number of employees in the rural county, ~~((and))~~ how long the person has been located in the county, and taxpayer name and registration number. The report must be filed by January 30th of each year for which credit was claimed during the previous year. Failure to file a report will not result in the loss of eligibility under this section. However, the department, through its research division, shall contact taxpayers who have not filed the report and obtain the data from the taxpayer or assist the taxpayer in the filing of the report, so that the data and information necessary to measure the program's effectiveness is maintained.

(8) Transfer of ownership does not affect credit eligibility~~((t))~~. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(9) As used in this section:

(a) "Information technology help desk services" means the following services performed using electronic and telephonic communication:

- (i) Software and hardware maintenance;
- (ii) Software and hardware diagnostics and troubleshooting;
- (iii) Software and hardware installation;
- (iv) Software and hardware repair;
- (v) Software and hardware information and training; and
- (vi) Software and hardware upgrade.

(b) "Rural county" means a county with a population density of less than one hundred persons per square mile, as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.

(10) This section expires December 31, 2003.

NEW SECTION. Sec. 13. This act takes effect July 1, 2000.

Passed the House February 8, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 24, 2000, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2000.

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

"I am returning herewith, without my approval as to section 4, House Bill No. 2519 entitled:

"AN ACT Relating to simplifying the excise tax code through revising terminology, correcting mistakes, streamlining procedures, and deleting obsolete provisions;"

Section 4 of this bill contained the same language as section 5 of Substitute Senate Bill No. 6467. Accordingly, I have vetoed section 4 to avoid double amendment of the statute.

For this reason, I have vetoed section 4 of House Bill No. 2519.

With the exception of section 4, House Bill No. 2519 is approved."

CHAPTER 107

[Engrossed Substitute House Bill 2078]

FISH AND WILDLIFE

AN ACT Relating to fish and wildlife; amending RCW 75.08.012, 75.08.020, 75.08.040, 75.08.045, 75.08.055, 75.08.080, 75.08.206, 75.08.208, 75.08.230, 75.08.245, 75.10.150, 75.12.230, 75.20.061, 75.20.098, 75.20.100, 75.20.104, 75.20.1041, 75.20.106, 75.20.130, 75.20.320, 75.24.060, 75.24.065, 75.24.070, 75.24.100, 75.24.130, 75.25.092, 75.28.011, 75.28.020, 75.28.034, 75.28.042, 75.28.046, 75.28.047, 75.28.048, 75.28.055, 75.28.095, 75.28.110, 75.28.113, 75.28.114, 75.28.116, 75.28.120, 75.28.125, 75.28.130, 75.28.132, 75.28.133, 75.28.280, 75.28.290, 75.28.300, 75.28.323, 75.28.340, 75.28.730, 75.28.740, 75.28.760, 75.28.770, 75.28.780, 75.30.021, 75.30.050, 75.30.060, 75.30.065, 75.30.070, 75.30.090, 75.30.100, 75.30.120, 75.30.125, 75.30.130, 75.30.140, 75.30.170, 75.30.180, 75.30.220, 75.30.270, 75.30.280, 75.30.290, 75.30.300, 75.30.320, 75.30.330, 75.30.350, 75.30.370, 75.30.380, 75.30.390, 75.30.420, 75.30.440, 75.30.460, 75.30.470, 75.30.490, 75.30.500, 75.40.020, 75.40.110, 75.44.100, 75.44.120, 75.44.130, 75.44.150, 75.46.010, 75.46.040, 75.46.050, 75.46.070, 75.46.080, 75.46.090, 75.46.100, 75.46.110, 75.46.120, 75.46.160, 75.46.170, 75.46.180, 75.48.100, 75.50.080, 75.50.105, 75.50.115, 75.50.160, 75.52.020, 75.52.050, 75.52.070, 75.52.100, 75.52.110, 75.52.130, 75.52.140, 75.52.160, 75.54.140, 75.54.150, 75.56.050, 75.58.010, 75.58.020, 75.58.030, 77.04.010, 77.04.020, 77.04.030, 77.04.055, 77.04.080, 77.04.100, 77.08.010, 77.12.010, 77.12.035, 77.12.055, 77.12.080, 77.12.090, 77.12.103, 77.12.204, 77.12.210, 77.12.220, 77.12.250, 77.12.315, 77.12.470, 77.12.480, 77.12.490, 77.12.610, 77.12.620, 77.12.630, 77.12.655, 77.12.830, 77.12.858, 77.15.070, 77.15.080, 77.15.090, 77.15.100, 77.15.120, 77.15.160, 77.15.300, 77.15.310, 77.15.320, 77.15.350, 77.15.360, 77.15.380, 77.15.390, 77.15.470, 77.15.480, 77.15.500, 77.15.530, 77.15.540, 77.15.570, 77.15.580, 77.15.620, 77.15.630, 77.15.640, 77.15.650, 77.15.710, 77.15.720, 77.16.020, 77.16.360, 77.17.020, 77.18.010, 77.21.090, 77.32.010, 77.32.014, 77.32.050, 77.32.090, 77.32.199, 77.32.250, 77.32.350, 77.32.380, and 77.32.420; reenacting and amending RCW 75.50.100, 75.50.110, and 77.12.170; adding new sections to chapter 77.04 RCW; adding new sections to chapter 77.08 RCW; adding new sections to chapter 77.12 RCW; adding new sections to chapter 77.15 RCW; adding new sections to chapter 77.32 RCW; adding new sections to chapter 77.44 RCW; adding new chapters to Title 77 RCW; creating a new section; recodifying RCW 75.08.012, 75.08.013, 75.08.020, 75.08.090, 75.08.110, 75.08.025, 75.08.040, 75.08.045, 75.08.055, 75.08.058, 75.08.065, 75.08.070, 75.08.080, 75.08.120, 75.08.160, 75.08.206, 75.08.208, 75.08.230, 75.08.235, 75.08.255, 75.08.265, 75.08.285, 75.08.295, 75.08.300, 75.12.010, 75.12.015, 75.12.040, 75.12.132, 75.12.140, 75.12.155, 75.12.210, 75.12.230, 75.12.390, 75.12.440, 75.12.650, 75.20.005, 75.20.015, 75.20.025, 75.20.040, 75.20.050, 75.20.060, 75.20.061, 75.20.090, 75.20.098, 75.20.100, 75.20.103, 75.20.104, 75.20.1041, 75.20.106, 75.20.108, 75.20.110, 75.20.130, 75.20.140, 75.20.150, 75.20.160, 75.20.170, 75.20.180, 75.20.190, 75.20.310, 75.20.320, 75.20.325, 75.20.330, 75.20.340, 75.20.350, 77.12.830, 75.24.010, 75.24.030, 75.24.060, 75.24.065, 75.24.070, 75.24.080, 75.24.100, 75.24.110, 75.24.120, 75.24.130, 75.24.140, 75.24.150, 75.28.010, 75.28.011, 75.28.014, 75.28.020, 75.28.030, 75.28.034, 75.28.040, 75.28.042, 75.28.044, 75.28.045, 75.28.046, 75.28.047, 75.28.048, 75.28.055, 75.28.095, 75.28.110, 75.28.113, 75.28.114, 75.28.116, 75.28.120, 75.28.125, 75.28.130, 75.28.132, 75.28.133, 75.28.280, 75.28.290, 75.28.295, 75.28.300, 75.28.302, 75.28.305, 75.28.315, 75.28.323, 75.28.328, 75.28.340, 75.28.690, 75.28.700, 75.28.710, 75.28.720, 75.28.730, 75.28.740, 75.28.750, 75.28.760, 75.28.770, 75.28.780, 75.28.900, 77.32.191, 77.32.197, 77.32.199, 77.32.211, 75.30.015, 75.30.021, 75.30.050, 75.30.060, 75.30.065, 75.30.070, 75.30.090, 75.30.100, 75.30.120, 75.30.125, 75.30.130, 75.30.140, 75.30.170, 75.30.180, 75.30.210, 75.30.220, 75.30.230, 75.30.240, 75.30.250, 75.30.260, 75.30.270,

75.30.280, 75.30.290, 75.30.300, 75.30.310, 75.30.320, 75.30.330, 75.30.350, 75.30.360, 75.30.370, 75.30.380, 75.30.390, 75.30.410, 75.30.420, 75.30.430, 75.30.440, 75.30.450, 75.30.460, 75.30.470, 75.30.480, 75.30.490, 75.30.500, 75.40.010, 75.40.020, 75.40.030, 75.40.040, 75.40.100, 75.40.110, 77.17.010, 77.17.020, 77.17.030, 77.12.450, 77.12.470, 77.12.480, 77.12.490, 75.40.060, 77.12.430, 77.12.440, 75.44.100, 75.44.110, 75.44.120, 75.44.130, 75.44.140, 75.44.150, 75.46.005, 75.46.010, 75.46.030, 75.46.040, 75.46.050, 75.46.060, 75.46.070, 75.46.080, 75.46.090, 75.46.100, 75.46.110, 75.46.120, 75.46.150, 75.46.160, 75.46.170, 75.46.180, 75.46.190, 75.46.200, 75.46.210, 75.46.300, 75.46.350, 75.56.050, 75.46.900, 75.48.020, 75.48.040, 75.48.050, 75.48.060, 75.48.070, 75.48.080, 75.48.100, 75.48.110, 75.50.010, 75.50.020, 75.50.030, 75.50.040, 75.50.060, 75.50.070, 75.50.080, 75.50.090, 75.50.100, 75.50.105, 75.50.110, 75.50.115, 75.50.125, 75.50.130, 75.50.150, 75.50.160, 75.50.165, 75.50.170, 75.50.180, 75.50.190, 75.08.245, 75.08.400, 75.08.410, 75.08.420, 75.08.430, 75.08.440, 75.08.450, 75.08.500, 75.08.510, 75.08.520, 75.08.530, 75.50.900, 75.52.010, 75.52.020, 75.52.030, 75.52.035, 75.52.040, 75.52.050, 75.52.060, 75.52.070, 75.08.047, 75.52.080, 75.52.100, 75.52.110, 75.52.120, 75.52.130, 75.52.140, 75.52.150, 75.52.160, 75.52.900, 75.54.005, 75.54.010, 75.54.020, 75.54.030, 75.54.040, 75.54.050, 75.54.060, 75.54.070, 75.54.080, 75.54.090, 75.54.100, 75.54.110, 75.54.120, 75.54.130, 75.54.140, 75.54.150, 75.54.900, 75.54.901, 75.56.010, 75.56.020, 75.56.030, 75.56.040, 75.56.900, 75.56.905, 75.58.010, 75.58.020, 75.58.030, 75.58.040, 75.25.092, 75.10.150, 77.04.100, 77.16.020, 77.16.095, 77.21.080, 77.12.080, 77.12.090, 77.12.095, 77.12.103, 77.16.070, 77.16.360, 77.21.090, 77.12.530, 77.12.770, 77.12.780, 77.16.010, 77.16.170, 77.18.005, 77.18.010, 77.18.020, and 77.18.030; decodifying RCW 75.25.901, 75.25.902, 75.30.055, 75.98.005, 75.98.006, 75.98.007, and 75.98.030; and repealing RCW 75.08.010, 75.08.011, 75.08.014, 75.08.035, 75.08.274, 75.10.070, 75.10.160, 75.25.090, 75.25.160, 75.25.210, 75.28.012, 75.28.335, 75.30.160, 77.08.070, 77.12.101, 77.12.200, 77.16.210, 77.16.290, 77.16.340, 77.16.350, 77.21.020, 77.21.030, 77.21.070, 77.32.005, 77.32.060, and 77.44.020.

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

NEW SECTION. Sec. I. The purpose of this act is to recodify Titles 75 and 77 RCW into Title 77 RCW ensuant to the merger of the departments of wildlife and fisheries.

PART I
TITLE 75
Amendments

Sec. 2. RCW 75.08.012 and 1983 1st ex.s. c 46 s 5 are each amended to read as follows:

Wildlife, fish, and shellfish are the property of the state. The commission, director, and the department shall preserve, protect, perpetuate, and manage the wildlife and food fish, game fish, and shellfish in state waters and offshore waters.

The department shall conserve the wildlife and food fish, game fish, and shellfish resources in a manner that does not impair the resource. In a manner consistent with this goal, the department shall seek to maintain the economic well-being and stability of the fishing industry in the state. The department shall promote orderly fisheries and shall enhance and improve recreational and commercial fishing in this state.

The commission may authorize the taking of wildlife, food fish, game fish, and shellfish only at times or places, or in manners or quantities, as in the judgment of the commission does not impair the supply of these resources.

The commission shall attempt to maximize the public recreational game fishing and hunting opportunities of all citizens, including juvenile, disabled, and senior citizens.

Recognizing that the management of our state wildlife, food fish, game fish, and shellfish resources depends heavily on the assistance of volunteers, the department shall work cooperatively with volunteer groups and individuals to achieve the goals of this title to the greatest extent possible.

Nothing in this title shall be construed to infringe on the right of a private property owner to control the owner's private property.

Sec. 3. RCW 75.08.020 and 1988 c 36 s 31 are each amended to read as follows:

(1) The director shall investigate the habits, supply, and economic use of food fish and shellfish in state and offshore waters.

(2) The director shall make an annual report to the governor on the operation of the department and the statistics of the fishing industry.

(3) Subject to RCW 40.07.040, the director shall provide a comprehensive biennial report of all departmental operations to the chairs of the committees on natural resources (~~and ways and means~~) of the senate and house of representatives, the senate ways and means committee, and the house of representatives appropriations committee, including one copy to the staff of each of the committees, to reflect the previous fiscal period. The format of the report shall be similar to reports issued by the department from 1964-1970 and the report shall include, but not be limited to, descriptions of all department activities including: Revenues generated, program costs, capital expenditures, personnel, special projects, new and ongoing research, environmental controls, cooperative projects, intergovernmental agreements, and outlines of ongoing litigation, recent court decisions and orders on major issues with the potential for state liability. The report shall describe the status of the resource and its recreational, commercial, and tribal utilization. The report (~~shall be given to the house and senate committees on ways and means and the house and senate committees on natural resources and~~) shall be made available to the public.

Sec. 4. RCW 75.08.040 and 1995 1st sp.s. c 2 s 23 are each amended to read as follows:

The commission may acquire by gift, easement, purchase, lease, or condemnation lands, buildings, water rights, (~~and~~) rights of way, or other necessary property, and construct and maintain necessary facilities for purposes consistent with this title. The commission may authorize the director to acquire property under this section, but the power of condemnation may only be exercised by the director when an appropriation has been made by the legislature for the acquisition of a specific property, except to clear title and acquire access rights of way.

The commission may sell, lease, convey, or grant concessions upon real or personal property under the control of the department.

Sec. 5. RCW 75.08.045 and 1995 1st sp.s. c 2 s 24 are each amended to read as follows:

The ~~((commission))~~ director may accept money or real property from persons under conditions requiring the use of the property or money for the protection, rehabilitation, preservation, or conservation of the state wildlife, food fish, and shellfish resources, or in settlement of claims for damages to wildlife, food fish, and shellfish resources. The ~~((commission))~~ director shall only accept real property useful for the protection, rehabilitation, preservation, or conservation of these fisheries resources.

Sec. 6. RCW 75.08.055 and 1995 1st sp.s. c 2 s 8 are each amended to read as follows:

(1) The commission may enter into agreements with and receive funds from the United States for the construction, maintenance, and operation of fish cultural stations, laboratories, and devices in the Columbia River basin for improvement of feeding and spawning conditions for fish, for the protection of migratory fish from irrigation projects and for facilitating free migration of fish over obstructions.

(2) The ~~((commission))~~ director and the department may acquire by gift, purchase, lease, easement, or condemnation the use of lands where the construction or improvement is to be carried on by the United States.

Sec. 7. RCW 75.08.080 and 1995 1st sp.s. c 2 s 11 are each amended to read as follows:

(1) The commission may adopt, amend, or repeal rules as follows:

(a) Specifying the times when the taking of wildlife, food fish, or shellfish is lawful or unlawful.

(b) Specifying the areas and waters in which the taking and possession of wildlife, food fish, or shellfish is lawful or unlawful.

(c) Specifying and defining the gear, appliances, or other equipment and methods that may be used to take wildlife, food fish, or shellfish, and specifying the times, places, and manner in which the equipment may be used or possessed.

(d) Regulating the possession, disposal, landing, and sale of wildlife, food fish, or shellfish within the state, whether acquired within or without the state.

(e) Regulating the prevention and suppression of diseases and pests affecting wildlife, food fish, or shellfish.

(f) Regulating the size, sex, species, and quantities of wildlife, food fish, or shellfish that may be taken, possessed, sold, or disposed of.

(g) Specifying the statistical and biological reports required from fishermen, dealers, boathouses, or processors of wildlife, food fish, or shellfish.

(h) Classifying species of marine and freshwater life as food fish or shellfish.

(i) Classifying the species of wildlife, food fish, and shellfish that may be used for purposes other than human consumption.

(j) Other rules necessary to carry out this title and the purposes and duties of the department.

(2) Subsections (1)(a), (b), (c), (d), and (f) of this section do not apply to private tideland owners and lessees and the immediate family members of the owners or lessees of state tidelands, when they take or possess oysters, clams,

cockles, borers, or mussels, excluding razor clams, produced on their own private tidelands or their leased state tidelands for personal use.

"Immediate family member" for the purposes of this section means a spouse, brother, sister, grandparent, parent, child, or grandchild.

(3) Except for subsection (1)(g) of this section, this section does not apply to private sector cultured aquatic products as defined in RCW 15.85.020. Subsection (1)(g) of this section does apply to such products.

Sec. 8. RCW 75.08.206 and 1983 1st ex.s. c 46 s 20 are each amended to read as follows:

The director shall provide compensation insurance for ~~((fisheries patrol))~~ fish and wildlife officers, insuring these employees against injury or death in the performance of enforcement duties not covered under the workers' compensation act of the state. The beneficiaries and the compensation and benefits under the compensation insurance shall be the same as provided in chapter 51.32 RCW, and the compensation insurance also shall provide for medical aid and hospitalization to the extent and amount as provided in RCW 51.36.010 and 51.36.020.

Sec. 9. RCW 75.08.208 and 1983 1st ex.s. c 46 s 22 are each amended to read as follows:

The director shall relieve from active duty ~~((fisheries patrol))~~ fish and wildlife officers who are injured in the performance of their official duties to such an extent as to be incapable of active service. While relieved from active duty, the employees shall receive one-half of their salary less any compensation received through the provisions of RCW 41.40.200, 41.40.220, and 75.08.206.

Sec. 10. RCW 75.08.230 and 1996 c 267 s 3 are each amended to read as follows:

(1) Except as provided in this ~~((section))~~ title, state and county officers receiving the following moneys shall deposit them in the state general fund:

(a) The sale of commercial licenses required under this title, except for licenses issued under chapter 77.32 RCW; and

(b) ~~((The sale of property seized or confiscated under this title;~~

~~—(c) Fines and forfeitures collected under this title;~~

~~—(d) The sale of real or personal property held for department purposes;~~

~~—(e) Rentals or concessions of the department;~~

~~—(f)) Moneys received for damages to food fish((;)) or shellfish ~~((or department property; and~~~~

~~—(g) Gifts)).~~

(2) The director shall make weekly remittances to the state treasurer of moneys collected by the department.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the department shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates

in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unanticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon carcasses and salmon eggs from state general funded hatcheries by the department of general administration shall be deposited in the regional fisheries enhancement group account established in RCW 75.50.100 (as recodified by this act).

(6) Moneys received by the commission under RCW 75.08.045 (as recodified by this act), to the extent these moneys exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for the specific purpose for which the moneys were received, unless the moneys were received in settlement of a claim for damages to food fish or shellfish, in which case the moneys may be expended for the conservation of these resources.

(7) Proceeds from the sale of herring spawn on kelp fishery licenses by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement.

Sec. II. RCW 75.08.245 and 1988 c 115 s 1 are each amended to read as follows:

The department may supply, at a reasonable charge, surplus salmon eggs to a person for use in the cultivation of salmon. The department shall not intentionally create a surplus of salmon to provide eggs for sale. The department shall only sell salmon eggs from stocks that are not suitable for salmon population rehabilitation or enhancement in state waters in Washington. All sales or transfers shall be consistent with the department's egg transfer and aquaculture disease control regulations as now existing or hereafter amended. Prior to department determination that eggs of a salmon stock are surplus and available for sale, the department shall assess the productivity of each watershed that is suitable for receiving eggs.

~~((The salmon enhancement advisory council, created in RCW 75.48.120, shall consider egg sales at each meeting.))~~

Sec. 12. RCW 75.10.150 and 1996 c 267 s 14 are each amended to read as follows:

Since violation of the rules of the department relating to the accounting of the commercial harvest of food fish and shellfish result in damage to the resources of the state, liability for damage to food fish and shellfish resources is imposed on a wholesale fish dealer for violation of a provision in chapter 75.28 RCW (as recodified by this act) or a rule of the department related to the accounting of the commercial harvest of food fish and shellfish and shall be for the actual damages or for damages imposed as follows:

(1) For violation of rules requiring the timely presentation to the department of documents relating to the accounting of commercial harvest, fifty dollars for each of the first fifteen documents in a series and ten dollars for each subsequent document in the same series. If documents relating to the accounting of commercial harvest of food fish and shellfish are lost or destroyed and the wholesale dealer notifies the department in writing within seven days of the loss or destruction, the director shall waive the requirement for timely presentation of the documents.

(2) For violation of rules requiring accurate and legible information relating to species, value, harvest area, or amount of harvest, twenty-five dollars for each of the first five violations of this subsection following July 28, 1985, and fifty dollars for each violation after the first five violations.

(3) For violations of rules requiring certain signatures, fifty dollars for each of the first two violations and one hundred dollars for each subsequent violation. For the purposes of this subsection, each signature is a separate requirement.

(4) For other violations of rules relating to the accounting of the commercial harvest, fifty dollars for each separate violation.

Sec. 13. RCW 75.12.230 and 1998 c 190 s 81 are each amended to read as follows:

Within the waters described in RCW 75.12.210 (as recodified by this act), a person shall not transport or possess salmon on board a vessel carrying fishing gear of a type other than troll lines or angling gear, unless accompanied by a certificate issued by a state or country showing that the salmon have been lawfully taken within the territorial waters of the state or country.

Sec. 14. RCW 75.20.061 and 1983 1st ex.s. c 46 s 73 are each amended to read as follows:

If the director determines that a fishway or fish guard described in RCW 75.20.040 and 75.20.060 (as recodified by this act) and in existence on September 1, 1963, is inadequate, in addition to other authority granted in this chapter, the director may remove, relocate, reconstruct, or modify the device, without cost to the owner. The director shall not materially modify the amount of flow of water through the device. After the department has completed the improvements, the fishways and fish guards shall be operated and maintained at the expense of the owner in accordance with RCW 75.20.040 and 75.20.060 (as recodified by this act).

Sec. 15. RCW 75.20.098 and 1997 c 424 s 6 are each amended to read as follows:

When reviewing a mitigation plan under RCW 75.20.100 or 75.20.103 (as recodified by this act), the department shall, at the request of the project proponent, follow the guidance contained in RCW 90.74.005 through 90.74.030.

Sec. 16. RCW 75.20.100 and 1998 c 190 s 87 are each amended to read as follows:

(1) In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the approval of the department as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld.

(2)(a) (~~Except as provided in RCW 75.20.1001,~~) The department shall grant or deny approval of a standard permit within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section.

(b) The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life.

(c) The forty-five day requirement shall be suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection; or

(iii) The applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(d) For purposes of this section, "standard permit" means a written permit issued by the department when the conditions under subsections (3) and (5)(b) of this section are not met.

(3)(a) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to repair existing structures, move obstructions, restore banks, protect property, or protect fish resources. Expedited permit requests require a complete written application as provided in subsection (2)(b) of this section and shall be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance.

(b) For the purposes of this subsection, "imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(d) The department or the county legislative authority may determine if an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists.

(4) Approval of a standard permit is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If the department denies approval, the department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Chapter 34.05 RCW applies to any denial of project approval, conditional approval, or requirements for project modification upon which approval may be contingent.

(5)(a) In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department, through its authorized representatives, shall issue immediately, upon request, oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval to protect fish life shall be established by the department and reduced to writing within thirty days and complied with as provided for in this section. Oral approval shall be granted immediately, upon request, for a stream crossing during an emergency situation.

(b) For purposes of this section and RCW 75.20.103 (as recodified by this act), "emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(c) The department or the county legislative authority may declare and continue an emergency when one or more of the criteria under (b) of this subsection are met. The county legislative authority shall immediately notify the department if it declares an emergency under this subsection.

(6) The department shall, at the request of a county, develop five-year maintenance approval agreements, consistent with comprehensive flood control management plans adopted under the authority of RCW 86 12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sand bars and debris, channel maintenance, and other flood damage repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects.

(7) This section shall not apply to the construction of any form of hydraulic project or other work which diverts water for agricultural irrigation or stock watering purposes authorized under or recognized as being valid by the state's

water codes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020. These irrigation or stock watering diversion and streambank stabilization projects shall be governed by RCW 75.20.103 (as recodified by this act).

A landscape management plan approved by the department and the department of natural resources under RCW 76.09.350(2), shall serve as a hydraulic project approval for the life of the plan if fish are selected as one of the public resources for coverage under such a plan.

(8) For the purposes of this section and RCW 75.20.103 (as recodified by this act), "bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

(9) The phrase "to construct any form of hydraulic project or perform other work" does not include the act of driving across an established ford. Driving across streams or on wetted stream beds at areas other than established fords requires approval. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires approval.

Sec. 17. RCW 75.20.104 and 1993 sp.s. c 2 s 33 are each amended to read as follows:

Whenever the placement of woody debris is required as a condition of a hydraulic permit approval issued pursuant to RCW 75.20.100 or 75.20.103 (as recodified by this act), the department, upon request, shall invite comment regarding that placement from the local governmental authority, affected tribes, affected federal and state agencies, and the project applicant.

Sec. 18. RCW 75.20.1041 and 1993 sp.s. c 2 s 34 are each amended to read as follows:

The department and the department of ecology will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84-99, and state requirements established pursuant to RCW 75.20.100 and 75.20.103 (as recodified by this act) are met.

Sec. 19. RCW 75.20.106 and 1993 sp.s. c 2 s 35 are each amended to read as follows:

The department may levy civil penalties of up to one hundred dollars per day for violation of any provisions of RCW 75.20.100 or 75.20.103 (as recodified by this act). The penalty provided shall be imposed by notice in writing, either by certified mail or personal service to the person incurring the penalty, from the director or the director's designee describing the violation. Any person incurring any penalty under this chapter may appeal the same under chapter 34.05 RCW to the director. Appeals shall be filed within thirty days of receipt of notice imposing any penalty. The penalty imposed shall become due and payable thirty days after

receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

If the amount of any penalty is not paid within thirty days after it becomes due and payable the attorney general, upon the request of the director shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action. All penalties recovered under this section shall be paid into the state's general fund.

Sec. 20. RCW 75.20.130 and 1996 c 276 s 2 are each amended to read as follows:

(1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

(2) The hydraulic appeals board shall consist of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department whose action is appealed under subsection (6) of this section. A decision must be agreed to by at least two members of the board to be final.

(3) The board may adopt rules necessary for the conduct of its powers and duties or for transacting other official business.

(4) The board shall make findings of fact and prepare a written decision in each case decided by it, and that finding and decision shall be effective upon being signed by two or more board members and upon being filed at the hydraulic appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a hydraulic approval issued by the department: (a) Under the authority granted in RCW 75.20.103 (as recodified by this act) for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020; or (b) under the authority granted in RCW 75.20.190 (as recodified by this act) for off-site mitigation proposals.

(6)(a) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic approval pursuant to RCW 75.20.103 (as recodified by this act) may seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of such approval.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings.

Sec. 21. RCW 75.20.320 and 1995 c 328 s 1 are each amended 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 (as recodified by this act).

Sec. 22. RCW 75.24.060 and 1998 c 245 s 152 are each amended to read as follows:

It is the policy of the state to improve state oyster reserves so that they are productive and yield a revenue sufficient for their maintenance. In fixing the price of oysters and other shellfish sold from the reserves, the director shall take into consideration this policy. It is also the policy of the state to maintain the oyster reserves to furnish shellfish to growers and processors and to stock public beaches.

Shellfish may be harvested from state oyster reserves for personal use as prescribed by rule of the director.

The ~~((department))~~ director shall periodically inventory the state oyster reserves and assign the reserve lands into management categories:

- (1) Native Olympia oyster broodstock reserves;
- (2) Commercial shellfish harvesting zones;
- (3) Commercial shellfish propagation zones designated for long-term leasing to private aquaculturists;
- (4) Public recreational shellfish harvesting zones;
- (5) Unproductive land.

The ~~((department))~~ director shall manage each category of oyster reserve land to maximize the sustained yield production of shellfish consistent with the purpose for establishment of each management category.

The ~~((department))~~ commission shall develop an oyster reserve management plan, to include recommendations for leasing reserve lands, in coordination with the shellfish industry, by January 1, 1986.

The director shall protect, reseed, improve the habitat of, and replant state oyster reserves ~~((and))~~. The director shall also issue cultch permits and oyster reserve fishery licenses.

Sec. 23. RCW 75.24.065 and 1993 sp.s. c 2 s 40 are each amended to read as follows:

The legislature finds that current environmental and economic conditions warrant a renewal of the state's historical practice of actively cultivating and managing its oyster reserves in Puget Sound to produce the state's native oyster, the Olympia oyster. The ~~((department))~~ director shall reestablish dike cultivated production of Olympia oysters on such reserves on a trial basis as a tool for planning more comprehensive cultivation by the state.

Sec. 24. RCW 75.24.070 and 1983 1st ex.s. c 46 s 82 are each amended to read as follows:

The director shall determine the time, place, and method of sale of oysters and other shellfish from state oyster reserves. Any person who commercially takes shellfish from state oyster reserves must possess an oyster reserve fishery license issued by the director pursuant to RCW 75.28.290 (as recodified by this act). Any person engaged in the commercial cultching of oysters on state oyster reserves must possess an oyster cultch permit issued by the director pursuant to RCW 75.28.295 (as recodified by this act).

To maintain local communities and industries and to restrain the formation of monopolies in the industry, the director shall determine the number of bushels which shall be sold to a person. When the shellfish are sold at public auction, the director may reject any and all bids.

Sec. 25. RCW 75.24.100 and 1998 c 190 s 91 are each amended to read as follows:

(1) The ~~((department))~~ director may not authorize a person to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW 79.96.080. The ~~((department))~~ director may not authorize commercial harvest of geoduck clams from bottoms that are shallower than eighteen feet below mean lower low water (0.0. ft.), or that lie in an area bounded by the line of ordinary high tide (mean high tide) and a line two hundred yards seaward from and parallel to the line of ordinary high tide. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the ~~((commission))~~ director shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The ~~((commission))~~ director may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations.

Sec. 26. RCW 75.24.130 and 1995 1st sp.s. c 2 s 30 are each amended to read as follows:

The commission may examine the clam, mussel, and oyster beds located on aquatic lands belonging to the state and request the commissioner of public lands to withdraw these lands from sale and lease for the purpose of establishing reserves or public beaches. The ~~((commission))~~ director shall conserve, protect, and develop these reserves and the oyster, shrimp, clam, and mussel beds on state lands.

Sec. 27. RCW 75.25.092 and 1999 c 243 s 3 are each amended to read as follows:

(1) A personal use shellfish and seaweed license is required for all persons other than residents or nonresidents under fifteen years of age to fish for, take, dig for, or possess seaweed or shellfish for personal use from state waters or offshore waters including national park beaches.

(2) The fees for annual personal use shellfish and seaweed licenses are:

- (a) For a resident fifteen years of age or older, seven dollars;
- (b) For a nonresident fifteen years of age or older, twenty dollars; and
- (c) For a senior, five dollars.

(3) The license fee for a two-day personal use shellfish and seaweed license is six dollars for residents or nonresidents fifteen years of age or older.

(4) The personal use shellfish and seaweed license shall be visible on the licensee while harvesting shellfish or seaweed.

Sec. 28. RCW 75.28.011 and 1997 c 418 s 1 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 (as recodified by this act);

(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 (as recodified by this act);

(iii) Fifty dollars if the license is a commercial salmon license and is limited under chapter 75.30 RCW (as recodified by this act);

(iv) Five hundred dollars if the license is a Dungeness crab-coastal fishery license; or

(v) If a license is transferred from a resident to a nonresident, an additional fee is assessed that is equal to 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.

Sec. 29. RCW 75.28.020 and 1994 c 244 s 1 are each amended to read as follows:

(1) Except as otherwise provided in this title, a person (~~as defined in RCW 75.08.011~~) may hold a commercial license established by this chapter.

(2) Except as otherwise provided in this title, an individual may hold a commercial license only if the individual is sixteen years of age or older and a bona fide resident of the United States.

(3) A corporation may hold a commercial license only if it is authorized to do business in this state.

(4) No person may hold a limited-entry license unless the person meets the qualifications that this title establishes for the license.

(5) The residency requirements in subsection (2) of this section do not apply to holders of nonsalmon delivery licenses.

Sec. 30. RCW 75.28.034 and 1995 c 227 s 1 are each amended 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)~~ director 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.

Sec. 31. RCW 75.28.042 and 1997 c 58 s 882 are each amended to read as follows:

(1) The department shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order (~~or a residential or visitation order~~).

(2) A listing on the department of licensing's data base that an individual's license is currently suspended pursuant to RCW 46.20.291(~~(7)~~) (8) shall be prima facie evidence that the individual is in noncompliance with a support order (~~or residential or visitation order~~). Presentation of a written release issued by the department of social and health services or a court stating that the person is in compliance with an order shall serve as proof of compliance.

Sec. 32. RCW 75.28.046 and 1998 c 267 s 2 are each amended to read as follows:

This section applies to all commercial fishery licenses and delivery licenses, except for whiting—Puget Sound fishery licenses and emergency salmon delivery licenses.

(1) The license holder may engage in the activity authorized by a license subject to this section. With the exception of Dungeness crab—coastal fishery class B licensees licensed under RCW 75.30.350(4) (as recodified by this act), the holder of a license subject to this section may also designate up to two alternate operators for the license. Dungeness crab—coastal fishery class B licensees may not designate alternate operators. A person designated as an alternate operator must possess an alternate operator license issued under RCW 75.28.048 (as recodified by this act).

(2) The fee to change the alternate operator designation is twenty-two dollars.

Sec. 33. RCW 75.28.047 and 1998 c 267 s 3 are each amended to read as follows:

(1) Only the license holder and any alternate operators designated on the license may sell or deliver food fish or shellfish under a commercial fishery license or delivery license. A commercial fishery license or delivery license authorizes no taking or delivery of food fish or shellfish unless the license holder or an alternate operator designated on the license is present or aboard the vessel.

(2) Notwithstanding RCW 75.28.010(1)(c) (as recodified by this act), an alternate operator license is not required for an individual to operate a vessel as a charter boat.

Sec. 34. RCW 75.28.048 and 1998 c 267 s 4 are each amended to read as follows:

(1) A person who holds a commercial fishery license or a delivery license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and

(b) The person is designated as an alternate operator on the underlying commercial fishery license or delivery license under RCW 75.28.046 (as recodified by this act).

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses or delivery licenses under RCW 75.28.046 (as recodified by this act).

(4) An individual who holds two Dungeness crab—Puget Sound fishery licenses may operate the licenses on one vessel if the vessel owner or alternate operator is on the vessel. The department shall allow a license holder to operate up to one hundred crab pots for each license.

(5) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state.

Sec. 35. RCW 75.28.055 and 1997 c 421 s 1 are each amended to read as follows:

The (~~fish and wildlife commission~~) director may, by rule, increase the number of alternate operators beyond the level authorized by RCW 75.28.030 and 75.28.046 (as recodified by this act) for a commercial fishery license, delivery license, or charter license.

Sec. 36. RCW 75.28.095 and 1998 c 190 s 95 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 <u>(as recodified by this act)</u> Surcharge)		Governing Section
	Resident	Nonresident	
(a) Nonsalmon charter	\$225	\$375	
(b) Salmon charter	\$380	\$685	RCW 75.30.065 <u>(as recodified by this act)</u>
	(plus \$100)	(plus \$100)	
(c) Salmon angler	\$ 0	\$ 0	RCW 75.30.070 <u>(as recodified by this act)</u>
(d) Salmon roe	\$ 95	\$ 95	RCW 75.28.690 <u>(as recodified by this act)</u>

(2) A salmon charter license designating a vessel is required to operate a charter boat to take salmon, other food fish, and shellfish. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 75.30.065 (as recodified by this act).

(3) A nonsalmon charter license designating a vessel is required to operate a charter boat to take food fish other than salmon and shellfish. 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.

(6) A salmon charter license under subsection (1)(b) of this section may be renewed if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred-dollar enhancement surcharge, plus a fifteen-dollar handling charge, in order to be considered a valid renewal and eligible to renew the license the following year.

Sec. 37. RCW 75.28.110 and 1997 c 76 s 1 are each amended to read as follows:

(1) The following commercial salmon fishery licenses are required for the license holder to use the specified gear to fish for salmon in state waters. Only a person who meets the qualifications of RCW 75.30.120 (as recodified by this act) may hold a license listed in this subsection. The licenses and their annual fees and surcharges under RCW 75.50.100 (as recodified by this act) are:

Fishery License	Resident Fee	Nonresident Fee	Surcharge
(a) Salmon Gill Net—Grays Harbor-Columbia river	\$380	\$685	plus \$100
(b) Salmon Gill Net—Puget Sound	\$380	\$685	plus \$100
(c) Salmon Gill Net—Willapa Bay-Columbia river	\$380	\$685	plus \$100
(d) Salmon purse seine	\$530	\$985	plus \$100
(e) Salmon reef net	\$380	\$685	plus \$100
(f) Salmon troll	\$380	\$685	plus \$100

(2) A license issued under this section authorizes no taking or delivery of salmon or other food fish unless a vessel is designated under RCW 75.28.045 (as recodified by this act).

(3) Holders of commercial salmon fishery licenses may retain incidentally caught food fish other than salmon, subject to rules of the department.

(4) A salmon troll license includes a salmon delivery license.

(5) A salmon gill net license authorizes the taking of salmon only in the geographical area for which the license is issued. The geographical designations in subsection (1) of this section have the following meanings:

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

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

(c) "Willapa Bay-Columbia river" includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to the Cape Shoalwater tower and those waters of the Columbia river and tributary sloughs described in (b) of this subsection.

(6) A commercial salmon troll fishery license may be renewed under this section if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. A commercial salmon gill net, reef net, or seine fishery license may be renewed under this section

if the license holder notifies the department by August 1st of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred-dollar enhancement surcharge, plus a fifteen-dollar handling charge, in order to be considered a valid renewal and eligible to renew the license the following year.

Sec. 38. RCW 75.28.113 and 1998 c 190 s 96 are each amended to read as follows:

(1) A salmon delivery license is required to deliver salmon taken in offshore waters to a place or port in the state. The annual fee for a salmon delivery license is three hundred eighty dollars for residents and six hundred eighty-five dollars for nonresidents. The annual surcharge under RCW 75.50.100 (as recodified by this act) is one hundred dollars for each license. Holders of nonlimited entry delivery licenses issued under RCW 75.28.125 (as recodified by this act) may apply the nonlimited entry delivery license fee against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 75.30.120 (as recodified by this act) may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other food fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05 RCW.

Sec. 39. RCW 75.28.114 and 1999 c 103 s 1 are each amended to read as follows:

(1) The legislature finds that landing salmon into the ports of Washington state, regardless of where such salmon have been harvested, is economically beneficial to those ports as well as to the citizens of the state of Washington. It is therefore the intent of the legislature to encourage this practice.

(2) Notwithstanding the provisions of RCW 75.28.010(1)(b) and 75.28.113 (as recodified by this act), a Washington citizen who holds a valid Oregon or California salmon troll license may land salmon taken during lawful seasons in Oregon and California into Washington ports without obtaining a salmon delivery license. This exception is valid only when the salmon were taken in offshore waters south of Cape Falcon.

(3) The department shall adopt rules necessary to implement this section, including rules identifying the appropriate methods for verifying that salmon were in fact taken south of Cape Falcon.

Sec. 40. RCW 75.28.116 and 1993 sp.s. c 17 s 37 are each amended to read as follows:

A person who does not qualify for a license under RCW 75.30.120 (as recodified by this act) shall obtain a nontransferable emergency salmon delivery license to make one delivery of salmon taken in offshore waters. The director shall

not issue an emergency salmon delivery license unless, as determined by the director, a bona fide emergency exists. The license fee is two hundred twenty-five dollars for residents and four hundred seventy-five dollars for nonresidents. An applicant for an emergency salmon delivery license shall designate no more than one vessel that will be used with the license. Alternate operator licenses are not required of persons delivering salmon under an emergency salmon delivery license. Emergency salmon delivery licenses are not renewable.

Sec. 41. RCW 75.28.120 and 1993 sp.s. c 17 s 38 are each amended to read as follows:

(1) This section establishes commercial fishery licenses required for food fish fisheries and the annual fees for those licenses. As used in this section, "food fish" does not include salmon. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Baitfish Lampara	\$185	\$295	Yes	No
(b) Baitfish purse seine	\$530	\$985	Yes	No
(c) Bottom fish jig	\$130	\$185	Yes	No
(d) Bottom fish pot	\$130	\$185	Yes	No
(e) Bottom fish troll	\$130	\$185	Yes	No
(f) Carp	\$130	\$185	No	No
(g) Columbia river smelt	\$380	\$685	No	No
(h) Dog fish set net	\$130	\$185	Yes	No
(i) Emerging commercial fishery (RCW 75.30.220 and 75.28.740 <u>(as recodified by this act)</u>)	\$185	\$295	Determined by rule	Determined by rule
(j) Food fish drag seine	\$130	\$185	Yes	No
(k) Food fish set line	\$130	\$185	Yes	No
(l) Food fish trawl- Non-Puget Sound	\$240	\$405	Yes	No
(m) Food fish trawl- Puget Sound	\$185	\$295	Yes	No
(n) Herring dip bag net (RCW 75.30.140 <u>(as recodified by this act)</u>)	\$175	\$275	Yes	Yes
(o) Herring drag seine (RCW 75.30.140 <u>(as recodified by this act)</u>)	\$175	\$275	Yes	Yes
(p) Herring gill net (RCW 75.30.140 <u>(as recodified by this act)</u>)	\$175	\$275	Yes	Yes
(q) Herring Lampara (RCW 75.30.140 <u>(as recodified by this act)</u>)	\$175	\$275	Yes	Yes
(r) Herring purse seine (RCW 75.30.140 <u>(as recodified by this act)</u>)	\$175	\$275	Yes	Yes

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(s) Herring spawn-on-kelp (RCW 75.30.270 (as <u>recodified by this act</u>))	N/A	N/A	Yes	Yes
(t) Smelt dip bag net	\$130	\$185	No	No
(u) Smelt gill net	\$380	\$685	Yes	No
(v) Whiting-Puget Sound (RCW 75.30.170 (as <u>recodified by this act</u>))	\$295	\$520	Yes	Yes

(2) The director may by rule determine the species of food fish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take food fish in that fishery.

Sec. 42. RCW 75.28.125 and 1998 c 190 s 97 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a person may not use a commercial fishing vessel to deliver food fish or shellfish taken in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp or coastal crab. The annual license fee for a nonlimited entry delivery license is one hundred ten dollars for residents and two hundred dollars for nonresidents.

(2) Holders of salmon troll fishery licenses issued under RCW 75.28.110 (as recodified by this act), salmon delivery licenses issued under RCW 75.28.113 (as recodified by this act), crab pot fishery licenses issued under RCW 75.28.130 (as recodified by this act), food fish trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.120 (as recodified by this act), Dungeness crab—coastal fishery licenses, ocean pink shrimp delivery licenses, and shrimp trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.130 (as recodified by this act) may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license.

(3) A nonlimited entry delivery license authorizes no taking of food fish or shellfish from state waters.

Sec. 43. RCW 75.28.130 and 1999 c 239 s 2 are each amended to read as follows:

(1) This section establishes commercial fishery licenses required for shellfish fisheries and the annual fees for those licenses. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Burrowing shrimp	\$185	\$295	Yes	No
(b) Crab ring net- Non-Puget Sound	\$130	\$185	Yes	No

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(c) Crab ring net- Puget Sound	\$130	\$185	Yes	No
(d) Dungeness crab- coastal (RCW 75.30.350 <u>(as recodified by this act)</u>)	\$295	\$520	Yes	Yes
(e) Dungeness crab- coastal, class B (RCW 75.30.350 <u>(as recodified by this act)</u>)	\$295	\$520	Yes	Yes
(f) Dungeness crab- Puget Sound (RCW 75.30.130 <u>(as recodified by this act)</u>)	\$130	\$185	Yes	Yes
(g) Emerging commercial fishery (RCW 75.30.220 and 75.28.740 <u>(as recodified by this act)</u>)	\$185	\$295	Determined by rule	Determined by rule
(h) Geoduck (RCW 75.30.280 <u>(as recodified by this act)</u>)	\$ 0	\$ 0	Yes	Yes
(i) Hardshell clam mechanical harvester (RCW 75.28.280 <u>(as recodified by this act)</u>)	\$530	\$985	Yes	No
(j) Oyster reserve (RCW 75.28.290 <u>(as recodified by this act)</u>)	\$130	\$185	No	No
(k) Razor clam	\$130	\$185	No	No
(l) Sea cucumber dive (RCW 75.30.250 <u>(as recodified by this act)</u>)	\$130	\$185	Yes	Yes
(m) Sea urchin dive (RCW 75.30.210 <u>(as recodified by this act)</u>)	\$130	\$185	Yes	Yes
(n) Shellfish dive	\$130	\$185	Yes	No
(o) Shellfish pot	\$130	\$185	Yes	No
(p) Shrimp pot- Puget Sound (RCW 75.30.490 <u>(as recodified by this act)</u>)	\$185	\$295	Yes	Yes
(q) Shrimp trawl- Non-Puget Sound	\$240	\$405	Yes	No
(r) Shrimp trawl- Puget Sound (RCW 75.30.500 <u>(as recodified by this act)</u>)	\$185	\$295	Yes Yes	Yes
(s) Squid	\$185	\$295	Yes	No

(2) The director may by rule determine the species of shellfish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear,

geographical area, or combination thereof, a more general fishery license may not be used to take shellfish in that fishery.

Sec. 44. RCW 75.28.132 and 1994 c 260 s 15 are each amended to read as follows:

A surcharge of fifty dollars shall be collected with each Dungeness crab-coastal fishery license issued under RCW 75.28.130 (as recodified by this act) until June 30, 2000, and with each Dungeness crab-coastal class B fishery license issued under RCW 75.28.130 (as recodified by this act) until December 31, 1997. Moneys collected under this section shall be placed in the Dungeness crab appeals account hereby created in the state treasury. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used for processing appeals related to the issuance of Dungeness crab-coastal fishery licenses.

Sec. 45. RCW 75.28.133 and 1997 c 418 s 5 are each amended to read as follows:

A surcharge of one hundred twenty dollars shall be collected with each Dungeness crab-coastal fishery license and with each Dungeness crab-coastal class B fishery license issued under RCW 75.28.130 (as recodified by this act). Moneys collected under this section shall be placed in the coastal crab account created under RCW 75.30.390 (as recodified by this act).

Sec. 46. RCW 75.28.280 and 1993 c 340 s 19 are each amended to read as follows:

A hardshell clam mechanical harvester fishery license is required to operate a mechanical or hydraulic device for commercially harvesting clams, other than geoduck clams, unless the requirements of RCW 75.20.100 (as recodified by this act) are fulfilled for the proposed activity.

Sec. 47. RCW 75.28.290 and 1993 c 340 s 20 are each amended to read as follows:

A person who commercially takes shellfish from state oyster reserves under RCW 75.24.070 (as recodified by this act) must have an oyster reserve fishery license.

Sec. 48. RCW 75.28.300 and 1993 sp.s. c 17 s 43 are each amended to read as follows:

A wholesale fish dealer's license is required for:

(1) A business in the state to engage in the commercial processing of food fish or shellfish, including custom canning or processing of personal use food fish or shellfish.

(2) A business in the state to engage in the wholesale selling, buying, or brokering of food fish or shellfish. A wholesale fish dealer's license is not required of those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail.

(3) Fishermen who land and sell their catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state.

(4) A business to engage in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other byproducts from food fish or shellfish.

(5) A business employing a fish buyer as defined under RCW 75.28.340 (as recodified by this act).

The annual license fee for a wholesale dealer is two hundred fifty dollars. A wholesale fish dealer's license is not required for persons engaged in the processing, wholesale selling, buying, or brokering of private sector cultured aquatic products as defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules.

Sec. 49. RCW 75.28.323 and 1996 c 267 s 30 are each amended to read as follows:

(1) A wholesale fish dealer shall not take possession of food fish or shellfish until the dealer has deposited with the department an acceptable performance bond on forms prescribed and furnished by the department. This performance bond shall be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under chapter 48.28 RCW and approved by the department. The bond shall be filed and maintained in an amount equal to one thousand dollars for each buyer engaged by the wholesale dealer. In no case shall the bond be less than two thousand dollars nor more than fifty thousand dollars.

(2) A wholesale dealer shall, within seven days of engaging additional fish buyers, notify the department and increase the amount of the bonding required in subsection (1) of this section.

(3) The director may suspend and refuse to reissue a wholesale fish dealer's license of a dealer who has taken possession of food fish or shellfish without an acceptable performance bond on deposit with the department.

(4) The bond shall be conditioned upon the compliance with the requirements of this chapter and rules of the department relating to the payment of fines for violations of rules for the accounting of the commercial harvest of food fish or shellfish. In lieu of the surety bond required by this section the wholesale fish dealer may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account or of a savings certificate in a Washington bank on an assignment form prescribed by the department.

(5) Liability under the bond shall be maintained as long as the wholesale fish dealer engages in activities under RCW 75.28.300 (as recodified by this act) unless released. Liability under the bond may be released only upon written notification from the department. Notification shall be given upon acceptance by the department of a substitute bond or forty-five days after the expiration of the

wholesale fish dealer's annual license. In no event shall the liability of the surety exceed the amount of the surety bond required under this chapter.

Sec. 50. RCW 75.28.340 and 1993 sp.s. c 17 s 46 are each amended to read as follows:

(1) A fish buyer's license is required of and shall be carried by each individual engaged by a wholesale fish dealer to purchase food fish or shellfish from a licensed commercial fisherman. A fish buyer may represent only one wholesale fish dealer.

(2) ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,))~~ The annual fee for a fish buyer's license is ninety-five dollars.

Sec. 51. RCW 75.28.730 and 1993 c 376 s 4 are each amended to read as follows:

An ocean pink shrimp delivery license is required to deliver ocean pink shrimp taken in offshore waters and delivered to a port in the state. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,))~~ The annual license fee is one hundred fifty dollars for residents and three hundred dollars for nonresidents. Ocean pink shrimp delivery licenses are transferable.

Sec. 52. RCW 75.28.740 and 1998 c 190 s 99 are each amended to read as follows:

(1) The director may by rule designate a fishery as an emerging commercial fishery. The director shall include in the designation whether the fishery is one that requires a vessel.

(2) "Emerging commercial fishery" means the commercial taking of a newly classified species of food fish or shellfish, the commercial taking of a classified species with gear not previously used for that species, or the commercial taking of a classified species in an area from which that species has not previously been commercially taken. Any species of food fish or shellfish commercially harvested in Washington state as of June 7, 1990, may be designated as a species in an emerging commercial fishery, except that no fishery subject to a license limitation program in chapter 75.30 RCW (as recodified by this act) may be designated as an emerging commercial fishery.

(3) A person shall not take food fish or shellfish in a fishery designated as an emerging commercial fishery without an emerging commercial fishery license and a permit from the director. The director shall issue two types of permits to accompany emerging commercial fishery licenses: Trial fishery permits and experimental fishery permits. Trial fishery permits are governed by subsection (4) of this section. Experimental fishery permits are governed by RCW 75.30.220 (as recodified by this act).

(4) The director shall issue trial fishery permits for a fishery designated as an emerging commercial fishery unless the director determines there is a need to limit the number of participants under RCW 75.30.220 (as recodified by this act). A person who meets the qualifications of RCW 75.28.020 (as recodified by this act)

may hold a trial fishery permit. The holder of a trial fishery permit shall comply with the terms of the permit. Trial fishery permits are not transferable from the permit holder to any other person.

Sec. 53. RCW 75.28.760 and 1993 sp.s. c 4 s 2 are each amended to read as follows:

By July 1, 1994, the ~~((departments of fisheries and wildlife))~~ commission jointly with the appropriate Indian tribes, shall each establish a wild salmonid policy. The policy shall ensure that department actions and programs are consistent with the goals of rebuilding wild stock populations to levels that permit commercial and recreational fishing opportunities.

Sec. 54. RCW 75.28.770 and 1998 c 245 s 153 are each amended to read as follows:

The ~~((department))~~ director shall evaluate and recommend, in consultation with the Indian tribes, salmon fishery management strategies and gear types, as well as a schedule for implementation, that will minimize the impact of commercial and recreational fishing in the mixed stock fishery on critical and depressed wild stocks of salmonids. As part of this evaluation, the ~~((department))~~ director, in conjunction with the commercial and recreational fishing industries, shall evaluate commercial and recreational salmon fishing gear types developed by these industries.

Sec. 55. RCW 75.28.780 and 1993 sp.s. c 17 s 42 are each amended to read as follows:

The director shall issue the personal licenses listed in this section according to the requirements of this title. The licenses and their annual fees are:

Personal License	Annual Fee		Governing Section
	(RCW 75.50.100 (as recodified by this act) Surcharges)		
	Resident	Nonresident	
(1) Alternate Operator	\$ 35	\$ 35	RCW 75.28.048 (as recodified by this act)
(2) Geoduck Diver	\$185	\$295	RCW 75.28.750 (as recodified by this act)
(3) Salmon Guide	\$130 (plus \$20)	\$630 (plus \$100)	RCW 75.28.710 (as recodified by this act)

Sec. 56. RCW 75.30.021 and 1995 c 227 s 2 are each amended to read as follows:

(1) The ~~((department))~~ director shall waive license requirements, including landing or poundage requirements, if, during the calendar year that a license issued pursuant to chapter 75.28 RCW ~~(as recodified by this act)~~ 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))~~ director 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.

Sec. 57. RCW 75.30.050 and 1999 c 151 s 1601 are each amended to read as follows:

(1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060 (as recodified by this act). Members shall be from:

(a) The commercial sea urchin and sea cucumber fishery in cases involving sea urchin and sea cucumber dive fishery licenses; (~~and~~) and

(b) 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.

Sec. 58. RCW 75.30.060 and 1995 1st sp.s. c 2 s 32 are each amended to read as follows:

A person aggrieved by a decision of the department under this chapter may request administrative review under the informal procedure established by this section.

In an informal hearing before a review board, the rules of evidence do not apply. A record of the proceeding shall be kept as provided by chapter 34.05 RCW. After hearing the case the review board shall notify in writing the (~~commission~~) director and the initiating party whether the review board agrees or disagrees with the department's decision and the reasons for the review board's findings. Upon receipt of the review board's findings the (~~commission~~) director may order such relief as the (~~commission~~) director deems appropriate under the circumstances.

Nothing in this section: (1) Impairs an aggrieved person's right to proceed under chapter 34.05 RCW; or (2) imposes a liability on members of a review board for their actions under this section.

Sec. 59. RCW 75.30.065 and 1993 c 340 s 28 are each amended to read as follows:

(1) After May 28, 1977, the director shall issue no new salmon charter licenses. A person may renew an existing salmon charter license only if the person held 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) Salmon charter licenses may be renewed each year. A salmon charter license which is not renewed each year shall not be renewed further.

(3) Subject to the restrictions in ~~((section 11 of this act))~~ RCW 75.28.011 (as recodified by this act), salmon charter licenses are transferrable from one license holder to another.

Sec. 60. RCW 75.30.070 and 1998 c 190 s 100 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, a person shall not operate a vessel as a charter boat from which salmon are taken in salt water without an angler permit. The angler permit shall specify the maximum number of persons that may fish from the charter boat per trip. The angler permit expires if the salmon charter license is not renewed.

(2) Only a person who holds a salmon charter license issued under RCW 75.28.095 and 75.30.065 (as recodified by this act) may hold an angler permit.

(3) An angler permit shall not be required for charter boats licensed in Oregon and fishing in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

Sec. 61. RCW 75.30.090 and 1993 c 340 s 30 are each amended to read as follows:

A salmon charter boat may not carry more anglers than the number specified in the angler permit issued under RCW 75.30.070 (as recodified by this act). Members of the crew may fish from the boat only to the extent that the number of anglers specified in the angler permit exceeds the number of noncrew passengers on the boat at that time.

Sec. 62. RCW 75.30.100 and 1993 c 340 s 31 are each amended to read as follows:

(1) The total number of anglers authorized by the ~~((department))~~ director shall not exceed the total number authorized for 1980.

(2) Angler permits issued under RCW 75.30.070 (as recodified by this act) are transferable. All or a portion of the permit may be transferred to another salmon charter license holder.

(3) The angler permit holder and proposed transferee shall notify the department when transferring an angler permit, and the ~~((department))~~ director shall issue a new angler permit certificate. If the original permit holder retains a portion of the permit, the ~~((department))~~ director shall issue a new angler permit certificate reflecting the decrease in angler capacity.

(4) The department shall collect a fee of ten dollars for each certificate issued under subsection (3) of this section.

Sec. 63. RCW 75.30.120 and 1995 c 135 s 7 are each 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 RCW 75.28.011 (as recodified by this act), commercial salmon fishery licenses and salmon delivery licenses are transferable from one license holder to another.

Sec. 64. RCW 75.30.125 and 1993 c 340 s 33 are each amended to read as follows:

Any commercial salmon fishery license issued under RCW 75.28.110 (as recodified by this act) or salmon delivery license issued under RCW 75.28.113 (as recodified by this act) shall revert to the department when any government confiscates and sells the vessel designated on the license. Upon application of the person named on the license as license holder and the approval of the director, the department shall transfer the license to the applicant. Application for transfer of the license must be made within the calendar year for which the license was issued.

Sec. 65. RCW 75.30.130 and 1999 c 151 s 1602 are each amended to read as follows:

(1) A person shall not commercially take Dungeness crab (*Cancer magister*) in Puget Sound without first obtaining a Dungeness crab—Puget Sound fishery license. As used in this section, "Puget Sound" has the meaning given in RCW 75.28.110(5)(a) (as recodified by this act). A Dungeness crab—Puget Sound fishery license is not required to take other species of crab, including red rock crab (*Cancer productus*).

(2) Except as provided in subsections (3) and (6) of this section, after January 1, 1982, the director shall issue no new Dungeness crab—Puget Sound fishery licenses. Only a person who meets the following qualification may renew an existing license: The person shall have held the Dungeness crab—Puget Sound fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person.

(3) 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.

(4) This section does not restrict the issuance of commercial crab licenses for areas other than Puget Sound or for species other than Dungeness crab.

(5) Dungeness crab—Puget Sound fishery licenses are transferable from one license holder to another.

(6) If fewer than one hundred twenty-five persons are eligible for Dungeness crab—Puget Sound fishery licenses, the director may accept applications for new licenses. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain one hundred twenty-five licenses in the Puget Sound Dungeness crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new Dungeness crab—Puget Sound fishery licenses.

Sec. 66. RCW 75.30.140 and 1998 c 190 s 102 are each amended to read as follows:

(1) A person shall not fish commercially for herring in state waters without a herring fishery license. As used in this section, "herring fishery license" means any of the following commercial fishery licenses issued under RCW 75.28.120 (as recodified by this act): Herring dip bag net; herring drag seine; herring gill net; herring lampara; herring purse seine.

(2) Except as provided in this section, a herring fishery license may be issued only to a person who 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.

(3) Herring fishery licenses may be renewed each year. A herring fishery license that is not renewed each year shall not be renewed further.

(4) The ~~((department))~~ director may issue additional herring fishery licenses if the stocks of herring will not be jeopardized by granting additional licenses.

(5) Subject to the restrictions of RCW 75.28.011 (as recodified by this act), herring fishery licenses are transferable from one license holder to another.

Sec. 67. RCW 75.30.170 and 1993 c 340 s 39 are each amended to read as follows:

(1) A person shall not commercially take whiting from areas that the department designates within the waters described in RCW 75.28.110(5)(a) (as recodified by this act) without a whiting-Puget Sound fishery license.

(2) A whiting-Puget Sound fishery license may be issued only to an individual who:

(a) Delivered at least fifty thousand pounds of whiting during the period from January 1, 1981, through February 22, 1985, as verified by fish delivery tickets;

(b) Possessed, on January 1, 1986, all equipment necessary to fish for whiting; and

(c) Held a whiting-Puget Sound fishery license during the previous year or acquired such a license by transfer from someone who held it during the previous year.

~~((2))~~ (3) After January 1, 1995, the director shall issue no new whiting-Puget Sound fishery licenses. After January 1, 1995, only an individual who meets the following qualifications may renew an existing license: The individual shall have held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person.

~~((3))~~ (4) Whiting-Puget Sound fishery licenses may be renewed each year. A whiting-Puget Sound fishery license that is not renewed each year shall not be renewed further.

Sec. 68. RCW 75.30.180 and 1993 c 340 s 40 are each amended to read as follows:

A whiting-Puget Sound fishery license may be transferred through gift, devise, bequest, or descent to members of the license holder's immediate family which shall be limited to spouse, children, or stepchildren. The holder of a whiting-Puget Sound fishery license shall be present on any vessel taking whiting under the license. In no instance may temporary permits be issued.

The director may adopt rules necessary to implement RCW ~~((75.30.160 through))~~ 75.30.170 and 75.30.180 (as recodified by this act).

Sec. 69. RCW 75.30.220 and 1993 c 340 s 42 are each amended to read as follows:

(1) The director may issue experimental fishery permits for commercial harvest in an emerging commercial fishery for which the director has determined there is a need to limit the number of participants. The director shall determine by rule the number and qualifications of participants for such experimental fishery permits. Only a person who holds an emerging commercial fishery license issued under RCW 75.28.740 (as recodified by this act) and who meets the qualifications established in those rules may hold an experimental fishery permit. The director shall limit the number of these permits to prevent habitat damage, ensure conservation of the resource, and prevent overharvesting. In developing rules for limiting participation in an emerging or expanding commercial fishery, the director shall appoint a five-person advisory board representative of the affected fishery industry. The advisory board shall review and make recommendations to the director on rules relating to the number and qualifications of the participants for such experimental fishery permits.

(2) RCW 34.05.422(3) does not apply to applications for new experimental fishery permits.

(3) Experimental fishery permits are not transferable from the permit holder to any other person.

Sec. 70. RCW 75.30.270 and 1993 c 340 s 37 are each amended to read as follows:

(1) A herring spawn on kelp fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type.

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 75.28.120 and 75.30.140 (as recodified by this act); and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders shall identify their sources of kelp. Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources. The department shall give all holders of herring fishery licenses thirty days' notice of the auction.

Sec. 71. RCW 75.30.280 and 1998 c 190 s 106 are each amended to read as follows:

(1) A person shall not harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under RCW 79.96.080 may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the underlying harvesting agreement.

(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.

(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 75.24.100 (as recodified by this act). In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.

(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The ~~((department))~~ director shall not suspend or revoke a geoduck fishery license if the violation has been corrected within ten days of the date the license holder receives written notice of the

violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the ~~((department))~~ director shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another person for the harvesting of geoducks, the ~~((department))~~ director shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured.

Sec. 72. RCW 75.30.290 and 1998 c 190 s 107 are each amended to read as follows:

A person shall not commercially deliver into any Washington state port ocean pink shrimp caught in offshore waters without an ocean pink shrimp delivery license issued under RCW 75.28.730 (as recodified by this act), or an ocean pink shrimp single delivery license issued under RCW 75.30.320 (as recodified by this act). An ocean pink shrimp delivery license shall be issued to a vessel that:

(1) Landed a total of at least five thousand pounds of ocean pink shrimp in Washington in any single calendar year between January 1, 1983, and December 31, 1992, as documented by a valid shellfish receiving ticket; and

(2) Can show continuous participation in the Washington, Oregon, or California ocean pink shrimp fishery by being eligible to land ocean pink shrimp in either Washington, Oregon, or California each year since the landing made under subsection (1) of this section. Evidence of such eligibility shall be a certified statement from the relevant state licensing agency that the applicant for a Washington ocean pink shrimp delivery license held at least one of the following permits:

(a) For Washington: Possession of a delivery permit or delivery license issued under RCW 75.28.125 ~~((or a trawl license (other than Puget Sound) issued under RCW 75.28.140))~~ (as recodified by this act);

(b) For Oregon: Possession of a vessel permit issued under Oregon Revised Statute 508.880; or

(c) For California: A trawl permit issued under California Fish and Game Code sec. 8842.

Sec. 73. RCW 75.30.300 and 1993 c 376 s 6 are each amended to read as follows:

An applicant who can show historical participation under RCW 75.30.290(1) (as recodified by this act) but does not satisfy the continuous participation requirement of RCW 75.30.290(2) (as recodified by this act) shall be issued an ocean pink shrimp delivery license if:

(1) The owner can prove that the owner was in the process on December 31, 1992, of constructing a vessel for the purpose of ocean pink shrimp harvest. For purposes of this section, "construction" means having the keel laid, and "for the purpose of ocean pink shrimp harvest" means the vessel is designed as a trawl vessel. An ocean pink shrimp delivery license issued to a vessel under

construction is not renewable after December 31, 1994, unless the vessel lands a total of at least five thousand pounds of ocean pink shrimp into a Washington state port before December 31, 1994; or

(2) The applicant's vessel is a replacement for a vessel that is otherwise eligible for an ocean pink shrimp delivery license.

Sec. 74. RCW 75.30.320 and 1993 c 376 s 8 are each amended to read as follows:

The owner of an ocean pink shrimp fishing vessel that does not qualify for an ocean pink shrimp delivery license issued under RCW 75.28.730 (as recodified by this act) shall obtain an ocean pink shrimp single delivery license in order to make a landing into a state port of ocean pink shrimp taken in offshore waters. The director shall not issue an ocean pink shrimp single delivery license unless, as determined by the director, a bona fide emergency exists. A maximum of six ocean pink shrimp single delivery licenses may be issued annually to any vessel. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,))~~ The fee for an ocean pink shrimp single delivery license is one hundred dollars.

Sec. 75. RCW 75.30.330 and 1993 c 376 s 10 are each amended to read as follows:

The director may reduce the landing requirements established under RCW 75.30.290 (as recodified by this act) upon the recommendation of an advisory review board established under RCW 75.30.050 (as recodified by this act), but the director may not entirely waive the landing requirement. The advisory review board may recommend a reduction of the landing requirement in individual cases if in the advisory review board's judgment, extenuating circumstances prevented achievement of the landing requirement. The director shall adopt rules governing the operation of the advisory review board and defining "extenuating circumstances."

Sec. 76. RCW 75.30.350 and 1998 c 190 s 108 are each amended to read as follows:

(1) A person shall not commercially 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 (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) (as recodified by this act);

(ii) Nonsalmon delivery license, issued under RCW 75.28.125 (as recodified by this act);

(iii) Salmon troll license, issued under RCW 75.28.110 (as recodified by this act);

(iv) Salmon delivery license, issued under RCW 75.28.113 (as recodified by this act);

(v) Food fish trawl license, issued under RCW 75.28.120 (as recodified by this act); or

(vi) Shrimp trawl license, issued under RCW 75.28.130 (as recodified by this act); 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 (as recodified by this act). 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

(b)(i) The keel was laid before September 15, 1992; and

(ii) 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.

(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.

(6) For purposes of this section and RCW 75.30.420 (as recodified by this act), "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.

Sec. 77. RCW 75.30.370 and 1994 c 260 s 4 are each amended to read as follows:

A person commercially fishing for Dungeness crab in offshore waters outside of Washington state jurisdiction shall obtain a Dungeness crab offshore delivery license from the director if the person does not possess a valid Dungeness crab-coastal fishery license or a valid Dungeness crab-coastal class B fishery license and the person wishes to land Dungeness crab into a place or a port in the state. The annual fee for a Dungeness crab offshore delivery license is two hundred fifty dollars. The director may specify restrictions on landings of offshore Dungeness crab in Washington state as authorized in RCW 75.30.360 (as recodified by this act).

Fees from the offshore Dungeness crab delivery license shall be placed in the ~~((coastal-coastal))~~ coastal crab account created in RCW 75.30.390 (as recodified by this act).

Sec. 78. RCW 75.30.380 and 1997 c 418 s 3 are each amended to read as follows:

Dungeness crab-coastal fishery licenses are freely transferable on a willing seller-willing buyer basis after paying the transfer fee in RCW 75.28.011 (as recodified by this act).

Sec. 79. RCW 75.30.390 and 1997 c 418 s 4 are each amended to read as follows:

The coastal crab account is created in the custody of the state treasurer. The account shall consist of revenues from fees from the transfer of each Dungeness crab-coastal fishery license assessed under RCW 75.28.011 (as recodified by this act), delivery fees assessed under RCW 75.30.370 (as recodified by this act), and the license surcharge under RCW 75.28.133 (as recodified by this act). 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. Funds may be used for coastal crab management activities as provided in RCW 75.30.410 (as recodified by this act).

Sec. 80. RCW 75.30.420 and 1994 c 260 s 9 are each amended to read as follows:

(1) An Oregon resident who can show historical and continuous participation in the Washington state coastal crab fishery by having held a nonresident non-Puget Sound crab pot license issued under RCW 75.28.130 (as recodified by this act) each year from 1990 through 1994, and who has delivered a minimum of eight landings totaling five thousand pounds of crab into Oregon during any two of the four qualifying seasons as provided in RCW 75.30.350~~((4))~~ (5) (as recodified by this act) as evidenced by valid Oregon fish receiving tickets, shall be issued a nonresident Dungeness crab-coastal fishery license valid for fishing in Washington state waters north from the Oregon-Washington boundary to United States latitude

forty-six degrees thirty minutes north. Such license shall be issued upon application and submission of proof of delivery.

(2) This section shall become effective contingent upon reciprocal statutory authority in the state of Oregon providing for equal access for Washington state coastal crab fishers to Oregon territorial coastal waters north of United States latitude forty-five degrees fifty-eight minutes north, and Oregon waters of the Columbia river.

Sec. 81. RCW 75.30.440 and 1994 c 260 s 13 are each amended to read as follows:

Except as provided under RCW 75.30.460 (as recodified by this act), the director shall issue no new Dungeness crab-coastal fishery licenses after December 31, 1995. A person may renew an existing license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person. 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.

Sec. 82. RCW 75.30.460 and 1994 c 260 s 17 are each amended to read as follows:

If fewer than one hundred seventy-five persons are eligible for Dungeness crab-coastal fishery licenses, the director may accept applications for new licenses. Additional licenses issued may maintain a maximum of one hundred seventy-five licenses in the Washington coastal crab fishery. If additional licenses are to be issued, the director shall adopt rules governing the notification, application, selection, and issuance procedures for new Dungeness crab-coastal fishery licenses, based on recommendations of the advisory review board established under RCW 75.30.050 (as recodified by this act).

Sec. 83. RCW 75.30.470 and 1994 c 260 s 19 are each amended to read as follows:

The director may reduce the landing requirements established under RCW 75.30.350 (as recodified by this act) upon the recommendation of an advisory review board established under RCW 75.30.050 (as recodified by this act), but the director may not entirely waive the landing requirement. The advisory review board may recommend a reduction of the landing requirement in individual cases if in the advisory review board's judgment, extenuating circumstances prevented achievement of the landing requirement. The director shall adopt rules governing the operation of the advisory review board and defining "extenuating circumstances." Extenuating circumstances may include situations in which a person had a vessel under construction such that qualifying landings could not be made. In defining extenuating circumstances, special consideration shall be given to individuals who can provide evidence of lack of access to capital based on past discrimination due to race, creed, color, sex, national origin, or disability.

Sec. 84. RCW 75.30.490 and 1999 c 239 s 3 are each amended to read as follows:

(1) The Puget Sound shrimp emerging fishery management regime is converted from an emerging fishery status to a limited entry fishery status effective January 1, 2000.

(2) Effective January 1, 2000, a person shall not fish for shrimp taken from Puget Sound for commercial purposes with shrimp pot gear except under the provisions of a shrimp pot-Puget Sound fishery license issued under RCW 75.28.130 (as recodified by this act).

(3) Effective January 1, 2000, a shrimp pot-Puget Sound fishery license shall only be issued to a natural person who held an emerging commercial fishery license and Puget Sound shrimp pot experimental fishery permit during 1999. Beginning January 1, 2001, a shrimp pot-Puget Sound fishery license shall only be issued to a natural person who held a shrimp pot-Puget Sound fishery license during the previous year.

(4) Shrimp pot-Puget Sound fishery licenses are nontransferable.

(5) The department, by rule, may set licensee participation requirements for Puget Sound shellfish pot shrimp harvest.

Sec. 85. RCW 75.30.500 and 1999 c 239 s 4 are each amended to read as follows:

(1) The Puget Sound shrimp emerging fishery management regime is converted from an emerging fishery status to a limited entry fishery status effective January 1, 2000.

(2) Effective January 1, 2000, a person shall not fish for shrimp taken from Puget Sound for commercial purposes with shrimp trawl gear except under the provisions of a shrimp trawl-Puget Sound fishery license issued under RCW 75.28.130 (as recodified by this act).

(3) Effective January 1, 2000, a shrimp trawl-Puget Sound fishery license shall only be issued to a natural person who held an emerging commercial fishery license and Puget Sound shrimp trawl experimental fishery permit during 1999. Beginning January 1, 2001, a shrimp trawl-Puget Sound fishery license shall only be issued to a natural person who held a shrimp trawl-Puget Sound fishery license during the previous licensing year.

(4) The department, by rule, may set licensee participation requirements for Puget Sound shellfish trawl shrimp harvest.

(5) Shrimp trawl-Puget Sound fishery licenses are nontransferable.

Sec. 86. RCW 75.40.020 and 1995 1st sp.s. c 2 s 19 are each amended to read as follows:

The commission may give to the state of Oregon such consent and approbation of the state of Washington as is necessary under the compact set out in RCW 75.40.010 (as recodified by this act). For the purposes of RCW 75.40.010 (as recodified by this act), the states of Washington and Oregon have concurrent

jurisdiction in the concurrent waters of the Columbia river ((~~as defined in RCW 75.08.011~~)).

Sec. 87. RCW 75.40.110 and 1994 c 148 s 2 are each amended to read as follows:

Until such time as the agencies in California, Idaho, Oregon, and Washington present a final proposed interstate compact for enactment by their respective legislative bodies, the governor may establish cooperative agreements with the states of California, Idaho, and Oregon that allow the states to coordinate their individual efforts in developing state programs that further the region-wide goals set forth under RCW 75.40.100 (as recodified by this act).

Sec. 88. RCW 75.44.100 and 1985 c 7 s 150 are each amended to read as follows:

As used in this chapter:

(1) "Case areas" means those areas of the Western district of Washington and in the adjacent offshore waters which are within the jurisdiction of the state of Washington, as defined in *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, and in *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976), or an area in which fishing rights are affected by court decision in a manner consistent with the above-mentioned decisions;

(2) "Program" means the program established under RCW 75.44.100 through 75.44.150 (as recodified by this act).

Sec. 89. RCW 75.44.120 and 1983 1st ex.s. c 46 s 157 are each amended to read as follows:

The purchase price of a vessel and appurtenant gear shall be based on a survey conducted by a qualified marine surveyor. A license or delivery permit shall be valued separately.

The director may specify a maximum price to be paid for a vessel, gear, license, or delivery permit purchased under RCW 75.44.110 (as recodified by this act). A license or delivery permit purchased under RCW 75.44.110 (as recodified by this act) shall be permanently retired by the department.

Sec. 90. RCW 75.44.130 and 1983 1st ex.s. c 46 s 158 are each amended to read as follows:

The department may arrange for the insurance, storage, and resale or other disposition of vessels and gear purchased under RCW 75.44.110 (as recodified by this act). Vessels shall not be resold by the department to the seller or the seller's immediate family. The vessels shall not be used by any owner or operator: (1) As a commercial fishing or charter vessel in state waters; or (2) to deliver fish to a place or port in the state. The department shall require that the purchasers and other users of vessels sold by the department execute suitable instruments to insure compliance with the requirements of this section. The director may commence suit

or be sued on such an instrument in a state court of record or United States district court having jurisdiction.

Sec. 91. RCW 75.44.150 and 1983 1st ex.s. c 46 s 160 are each amended to read as follows:

The director is responsible for the administration and disbursement of all funds, goods, commodities, and services received by the state under the program.

There is created within the state treasury a fund to be known as the "vessel, gear, license, and permit reduction fund". This fund shall be used for purchases under RCW 75.44.110 (as recodified by this act) and for the administration of the program. This fund shall be credited with federal or other funds received to carry out the purposes of the program and the proceeds from the sale or other disposition of property purchased under RCW 75.44.110 (as recodified by this act).

Sec. 92. RCW 75.46.010 and 1998 c 246 s 2 are each amended to read as follows:

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

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Critical pathways methodology" means a project scheduling and management process for examining interactions between habitat projects and salmonid species, prioritizing habitat projects, and assuring positive benefits from habitat projects.

(3) "Habitat project list" is the list of projects resulting from the critical pathways methodology under RCW 75.46.070(2) (as recodified by this act). Each project on the list must have a written agreement from the landowner on whose land the project will be implemented. Projects include habitat restoration projects, habitat protection projects, habitat projects that improve water quality, habitat projects that protect water quality, habitat-related mitigation projects, and habitat project maintenance and monitoring activities.

(4) "Habitat work schedule" means those projects from the habitat project list that will be implemented during the current funding cycle. The schedule shall also include a list of the entities and individuals implementing projects, the start date, duration, estimated date of completion, estimated cost, and funding sources for the projects.

(5) "Limiting factors" means conditions that limit the ability of habitat to fully sustain populations of salmon. These factors are primarily fish passage barriers and degraded estuarine areas, riparian corridors, stream channels, and wetlands.

(6) "Project sponsor" is a county, city, special district, tribal government, a combination of such governments through interlocal agreements provided under chapter 39.34 RCW, a nonprofit organization, or one or more private citizens.

(7) "Salmon" includes all species of the family Salmonidae which are capable of self-sustaining, natural production.

(8) "Salmon recovery plan" means a state plan developed in response to a proposed or actual listing under the federal endangered species act that addresses limiting factors including, but not limited to harvest, hatchery, hydropower, habitat, and other factors of decline.

(9) "Tribe" or "tribes" means federally recognized Indian tribes.

(10) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(11) "Owner" means the person holding title to the land or the person under contract with the owner to lease or manage the legal owner's property.

Sec. 93. RCW 75.46.040 and 1999 1st sp.s. c 13 s 8 are each amended to read as follows:

(1) The salmon recovery office is created within the office of the governor to coordinate state strategy to allow for salmon recovery to healthy sustainable population levels with productive commercial and recreational fisheries. The primary purpose of the office is to coordinate and assist in the development of salmon recovery plans for evolutionarily significant units, and submit those plans to the appropriate tribal governments and federal agencies as an integral part of a state-wide strategy developed consistent with the guiding principles and procedures under RCW 75.46.190 (as recodified by this act). The governor's salmon recovery office may also:

(a) Act as liaison to local governments, the state congressional delegation, the United States congress, federally recognized tribes, and the federal executive branch agencies for issues related to the state's endangered species act salmon recovery plans; and

(b) Provide the biennial state of the salmon report to the legislature pursuant to RCW 75.46.030 (as recodified by this act).

(2) This section expires June 30, 2006.

Sec. 94. RCW 75.46.050 and 1999 1st sp.s. c 13 s 10 are each amended to read as follows:

(1) The governor shall request the national academy of sciences, the American fisheries society, or a comparable institution to screen candidates to serve as members on the independent science panel. The institution that conducts the screening of the candidates shall submit a list of the nine most qualified candidates to the governor, the speaker of the house of representatives, and the majority leader of the senate. The candidates shall reflect expertise in habitat requirements of salmon, protection and restoration of salmon populations, artificial propagation of salmon, hydrology, or geomorphology.

(2) The speaker of the house of representatives and the majority leader in the senate may each remove one name from the nomination list. The governor shall consult with tribal representatives and the governor shall appoint five scientists from the remaining names on the nomination list.

(3) The members of the independent science panel shall serve four-year terms. Vacant positions on the panel shall be filled in the same manner as the original

appointments. Members shall serve no more than two full terms. The independent science panel members shall elect the chair of the panel among themselves every two years. Based upon available funding, the governor's salmon recovery office may contract for services with members of the independent science panel for compensation under chapter 39.29 RCW.

(4) The independent science panel shall be governed by generally accepted guidelines and practices governing the activities of independent science boards such as the national academy of sciences. The purpose of the independent science panel is to help ensure that sound science is used in salmon recovery efforts. The governor's salmon recovery office shall request review of salmon recovery plans by the science review panel. The science panel does not have the authority to review individual projects or habitat project lists developed under RCW 75.46.060, 75.46.070, and 75.46.080 (as recodified by this act) or to make policy decisions. The panel shall periodically submit its findings and recommendations under this subsection to the legislature and the governor.

(5) The independent science panel, in conjunction with the technical review team, shall recommend standardized monitoring indicators and data quality guidelines for use by entities involved in habitat projects and salmon recovery activities across the state.

(6) The independent science panel, in conjunction with the technical review team, shall also recommend criteria for the systematic and periodic evaluation of monitoring data in order for the state to be able to answer critical questions about the effectiveness of the state's salmon recovery efforts.

(7) The recommendations on monitoring as required in this section shall be provided in a report to the governor and to the legislature by the independent science panel, in conjunction with the salmon recovery office, no later than December 31, 2000. The report shall also include recommendations on the level of effort needed to sustain monitoring of salmon projects and other recovery efforts, and any other recommendations on monitoring deemed important by the independent science panel and the technical review team. The report may be included in the biennial state of the salmon report required under RCW 75.46.030 (as recodified by this act).

Sec. 95. RCW 75.46.070 and 1999 1st sp.s. c 13 s 12 are each amended to read as follows:

(1) Critical pathways methodology shall be used to develop a habitat project list and a habitat work schedule that ensures salmon habitat projects will be prioritized and implemented in a logical sequential manner that produces habitat capable of sustaining healthy populations of salmon.

(2) The critical pathways methodology shall:

(a) Include a limiting factors analysis for salmon in streams, rivers, tributaries, estuaries, and subbasins in the region. The technical advisory group shall have responsibility for the limiting factors analysis;

(b) Identify local habitat projects that sponsors are willing to undertake. The projects identified must have a written agreement from the landowner on which the project is to be implemented. Project sponsors shall have the lead responsibility for this task;

(c) Identify how projects will be monitored and evaluated. The project sponsor, in consultation with the technical advisory group and the appropriate landowner, shall have responsibility for this task;

(d) Include a review of monitoring data, evaluate project performance, and make recommendations to the committee established under RCW 75.46.060 (as recodified by this act) and to the technical review team. The technical advisory group has responsibility for this task; and

(e) Describe the adaptive management strategy that will be used. The committee established under RCW 75.46.060 (as recodified by this act) shall have responsibility for this task. If a committee has not been formed, the technical advisory group shall have the responsibility for this task.

(3) The habitat work schedule shall include all projects developed pursuant to subsection (2) of this section, and shall identify and coordinate with any other salmon habitat project implemented in the region, including habitat preservation projects funded through the Washington wildlife and recreation program, the conservation reserve enhancement program, and other conservancy programs. The habitat work schedule shall also include the start date, duration, estimated date of completion, estimated cost, and, if appropriate, the affected salmonid species of each project. Each schedule shall be updated on an annual basis to depict new activities.

Sec. 96. RCW 75.46.080 and 1999 1st sp.s. c 13 s 15 are each amended to read as follows:

(1) Representatives from the conservation commission, the department of transportation, the department of natural resources, the department of ecology, and the department of fish and wildlife shall establish an interagency review team. Habitat restoration project lists shall be submitted to the interagency review team by January 1st and July 1st of each year. The purpose of the team is to assist the salmon recovery funding board in developing procedures and standards for state-wide funding allocation, and to assist the board in reviewing funding applications to identify the highest priority projects and activities for funding.

(2) If a lead entity established under RCW 75.46.060 (as recodified by this act) has been formed, the interagency review team shall evaluate habitat project lists developed pursuant to RCW 75.46.060 (as recodified by this act) and submitted to the board for consideration for funding. The team shall advise the board on whether the list for the area complies with the list development procedures and critical path methodology provided by RCW 75.46.060 and 75.46.070 (as recodified by this act). When the board determines the list to comply with those requirements it shall accord substantial weight to the list's project priorities when making determinations among applications for funding of projects

and activities within the area covered by the list. Projects that include use of side channels, off-stream rearing enhancement, improvement in overwintering habitat, or use of acclimation ponds shall receive consideration for funding.

(3) The board may annually establish a maximum amount of funding available for any individual project, subject to available funding.

(4) Where a lead entity has been established pursuant to RCW 75.46.060 (as recodified by this act), the board may provide grants to the lead entity to assist in carrying out lead entity functions under this chapter, subject to available funding.

(5) The interagency review team shall review, rank, and approve projects submitted for funding until January 1, 2000.

(6) This section expires July 1, 2000.

Sec. 97. RCW 75.46.090 and 1998 c 246 s 10 are each amended to read as follows:

(1) The conservation commission, in consultation with local government and the tribes, shall invite private, federal, state, tribal, and local government personnel with appropriate expertise to act as a technical advisory group.

(2) For state personnel, involvement on the technical advisory group shall be at the discretion of the particular agency. Unless specifically provided for in the budget, technical assistance participants shall be provided from existing full-time equivalent employees.

(3) The technical advisory group shall identify the limiting factors for salmonids to respond to the limiting factors relating to habitat pursuant to RCW 75.46.070(2) (as recodified by this act).

(4) Where appropriate, the conservation district within the area implementing this chapter shall take the lead in developing and maintaining relationships between the technical advisory group and the private landowners under RCW 75.46.080 (as recodified by this act). The conservation districts may assist landowners to organize around river, tributary, estuary, or subbasins of a watershed.

(5) Fishery enhancement groups and other volunteer organizations may participate in the activities under this section.

Sec. 98. RCW 75.46.100 and 1999 1st sp.s. c 13 s 14 are each amended to read as follows:

The sea grant program at the University of Washington is authorized to provide technical assistance to volunteer groups and other project sponsors in designing and implementing habitat projects that address the limiting factors analysis required under RCW 75.46.070 (as recodified by this act). The cost for such assistance may be covered on a fee-for-service basis.

Sec. 99. RCW 75.46.110 and 1998 c 246 s 12 are each amended to read as follows:

The southwest Washington salmon recovery region, whose boundaries are provided in chapter 60, Laws of 1998, is created. (~~(If chapter 60, Laws of 1998 is not enacted by July 1, 1998, this section is null and void.)~~)

Sec. 100. RCW 75.46.120 and 1998 c 246 s 16 are each amended to read as follows:

(1) The departments of transportation, fish and wildlife, and ecology, and tribes shall convene a work group to develop policy guidance to evaluate mitigation alternatives. The policy guidance shall be designed to enable committees established under RCW 75.46.060 (as recodified by this act) to develop and implement habitat project lists that maximize environmental benefits from project mitigation while reducing project design and permitting costs. The work group shall seek technical assistance to ensure that federal, state, treaty right, and local environmental laws and ordinances are met. The purpose of this section is not to increase regulatory requirements or expand departmental authority.

(2) The work group shall develop guidance for determining alternative mitigation opportunities. Such guidance shall include criteria and procedures for identifying and evaluating mitigation opportunities within a watershed. Such guidance shall create procedures that provide alternative mitigation that has a low risk to the environment, yet has high net environmental, social, and economic benefits compared to status quo options.

(3) The evaluation shall include:

(a) All elements of mitigation, including but not limited to data requirements, decision making, state and tribal agency coordination, and permitting; and

(b) Criteria and procedures for identifying and evaluating mitigation opportunities, including but not limited to the criteria in chapter 90.74 RCW.

(4) Committees established under RCW 75.46.060 (as recodified by this act) shall coordinate voluntary collaborative efforts between habitat project proponents and mitigation project proponents. Mitigation funds may be used to implement projects identified by a work plan to mitigate for the impacts of a transportation or other development proposal or project.

(5) For the purposes of this section, "mitigation" has the same meaning as provided in RCW 90.74.010.

Sec. 101. RCW 75.46.160 and 1999 1st sp.s. c 13 s 4 are each amended to read as follows:

(1) The (~~salmon recovery funding~~) salmon recovery funding board is responsible for making grants and loans for salmon habitat projects and salmon recovery activities from the amounts appropriated to the board for this purpose. To accomplish this purpose the board may:

(a) Provide assistance to grant applicants regarding the procedures and criteria for grant and loan awards;

(b) Make and execute all manner of contracts and agreements with public and private parties as the board deems necessary, consistent with the purposes of this chapter;

(c) Accept any gifts, grants, or loans of funds, property, or financial or other aid in any form from any other source on any terms that are not in conflict with this chapter;

(d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(e) Do all acts and things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(2) The interagency committee for outdoor recreation shall provide all necessary grants and loans administration assistance to the board, and shall distribute funds as provided by the board in RCW 75.46.170 (as recodified by this act).

Sec. 102. RCW 75.46.170 and 1999 1st sp.s. c 13 s 5 are each amended to read as follows:

(1) The (~~salmon recovery funding~~) salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a state-wide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to partially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to available funding. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

(2)(a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:

(i) Are based upon the limiting factors analysis identified under RCW 75.46.070 (as recodified by this act);

(ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available;

(iii) Will benefit listed species and other fish species; and

(iv) Will preserve high quality salmonid habitat.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

(i) Are the most cost-effective;

(ii) Have the greatest matched or in-kind funding; and

(iii) Will be implemented by a sponsor with a successful record of project implementation.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) For fiscal year 2000, the board may authorize the interagency review team to evaluate, rank, and make funding decisions for categories of projects or activities or from funding sources provided for categories of projects or activities. In delegating such authority the board shall consider the review team's staff resources,

procedures, and technical capacity to meet the purposes and objectives of this chapter. The board shall maintain general oversight of the team's exercise of such authority.

(5) The board shall seek the guidance of the technical review team to ensure that scientific principles and information are incorporated into the allocation standards and into proposed projects and activities. If the technical review team determines that a habitat project list complies with the critical pathways methodology under RCW 75.46.070 (as recodified by this act), it shall provide substantial weight to the list's project priorities when making determinations among applications for funding of projects within the area covered by the list.

(6) The board shall establish criteria for determining when block grants may be made to a lead entity or other recognized regional recovery entity consistent with one or more habitat project lists developed for that region. Where a lead entity has been established pursuant to RCW 75.46.060 (as recodified by this act), the board may provide grants to the lead entity to assist in carrying out lead entity functions under this chapter, subject to available funding. The board shall determine an equitable minimum amount of funds for each region, and shall distribute the remainder of funds on a competitive basis.

(7) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condition of the board's receipt of the funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in the award of funding while recognizing the differences in state and legislative appropriation timing.

Sec. 103. RCW 75.46.180 and 1999 1st sp.s. c 13 s 6 are each amended to read as follows:

(1) Habitat project lists shall be submitted to the salmon recovery funding board for funding by January 1st and July 1st of each year beginning in 2000. The board shall provide the legislature with a list of the proposed projects and a list of the projects funded by October 1st of each year beginning in 2000 for informational purposes.

(2) The interagency committee for outdoor recreation shall track all funds allocated for salmon habitat projects and salmon recovery activities on behalf of the board, including both funds allocated by the board and funds allocated by other state or federal agencies for salmon recovery or water quality improvement.

(3) Beginning in December 2000, the board shall provide a biennial report to the governor and the legislature on salmon recovery expenditures. This report shall be coordinated with the state of the salmon report required under RCW 75.46.030 (as recodified by this act).

Sec. 104. RCW 75.48.100 and 1983 1st ex.s. c 46 s 170 are each amended to read as follows:

The bonds authorized by this chapter shall be issued only after the director has certified, based upon reasonable estimates and data provided to the department, that sufficient revenues will be available from sport and commercial salmon license sales and from salmon fees and taxes to meet the requirements of RCW 75.48.080 (as recodified by this act) during the life of the bonds.

Sec. 105. RCW 75.50.080 and 1997 c 389 s 5 are each amended to read as follows:

Regional fisheries enhancement groups, consistent with the long-term regional policy statements developed under RCW 75.50.020 (as recodified by this act), shall seek to:

- (1) Enhance the salmon and steelhead resources of the state;
- (2) Maximize volunteer efforts and private donations to improve the salmon and steelhead resources for all citizens;
- (3) Assist the department in achieving the goal to double the state-wide salmon and steelhead catch by the year 2000; and
- (4) Develop projects designed to supplement the fishery enhancement capability of the department.

Sec. 106. RCW 75.50.100 and 1998 c 245 s 155 and 1998 c 191 s 27 are each reenacted and amended to read as follows:

The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A portion of each recreational fishing license fee shall be used as provided in RCW 77.32.440. A surcharge of one hundred dollars shall be collected on each commercial salmon fishery license, each salmon delivery license, and each salmon charter license sold in the state. All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 75.50.110 (as recodified by this act). Funds from the regional fisheries enhancement group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The commission shall adopt rules to implement this section pursuant to chapter 34.05 RCW.

Sec. 107. RCW 75.50.105 and 1997 c 389 s 2 are each amended to read as follows:

The department may provide start-up funds to regional fisheries enhancement groups for costs associated with any enhancement project. The regional fisheries enhancement group advisory board and the ~~((department))~~ commission shall

develop guidelines for providing funds to the regional fisheries enhancement groups.

Sec. 108. RCW 75.50.110 and 1995 1st sp.s. c 2 s 40 and 1995 c 367 s 5 are each reenacted and amended to read as follows:

(1) A regional fisheries enhancement group advisory board is established to make recommendations to the commission. The members shall be appointed by the commission and consist of two commercial fishing representatives, two recreational fishing representatives, and three at-large positions. At least two of the advisory board members shall be members of a regional fisheries enhancement group. Advisory board members shall serve three-year terms. The advisory board membership shall include two members serving ex officio to be nominated, one through the Northwest Indian fisheries commission, and one through the Columbia river intertribal fish commission. The chair of the regional fisheries enhancement group advisory board shall be elected annually by members of the regional fisheries enhancement (~~((group))~~) group advisory board. The advisory board shall meet at least quarterly. All meetings of the advisory board shall be open to the public under the open public meetings act, chapter 42.30 RCW.

The department shall invite the advisory board to comment and provide input into all relevant policy initiatives, including, but not limited to, wild stock, hatcheries, and habitat restoration efforts.

(2) Members shall not be compensated but shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The department may use account funds to provide agency assistance to the groups, to provide professional, administrative or clerical services to the advisory board, or to implement the training and technical (~~((assistance))~~) assistance services plan as developed by the advisory board pursuant to RCW 75.50.115 (as recodified by this act). The level of account funds used by the department shall be determined by the commission after review of recommendation by the regional fisheries enhancement group advisory board and shall not exceed twenty percent of annual contributions to the account.

Sec. 109. RCW 75.50.115 and 1998 c 96 s 1 are each amended to read as follows:

(1) The regional fisheries enhancement group advisory board shall:

(a) Assess the training and technical assistance needs of the regional fisheries enhancement groups;

(b) Develop a training and technical assistance services plan in order to provide timely, topical technical assistance and training services to regional fisheries enhancement groups. The plan shall be provided to the director and to the senate and house of representatives natural resources committees no later than October 1, 1995, and shall be updated not less than every year. The advisory board shall provide ample opportunity for the public and interested parties to participate in the development of the plan. The plan shall include but is not limited to:

(i) Establishment of an information clearinghouse service that is readily available to regional fisheries enhancement groups. The information clearinghouse shall collect, collate, and make available a broad range of information on subjects that affect the development, implementation, and operation of diverse fisheries and habitat enhancement projects. The information clearinghouse service may include periodical news and informational bulletins;

(ii) An ongoing program in order to provide direct, on-site technical assistance and services to regional fisheries enhancement groups. The advisory board shall assist regional fisheries enhancement groups in soliciting federal, state, and local agencies, tribal governments, institutions of higher education, and private business for the purpose of providing technical assistance and services to regional fisheries enhancement group projects; and

(iii) A cost estimate for implementing the plan;

(c) Propose a budget to the director for operation of the advisory board and implementation of the technical assistance plan;

(d) Make recommendations to the director regarding regional enhancement group project proposals and funding of those proposals; and

(e) Establish criteria for the redistribution of unspent project funds for any regional enhancement group that has a year ending balance exceeding one hundred thousand dollars.

(2) The regional fisheries enhancement group advisory board may:

(a) Facilitate resolution of disputes between regional fisheries enhancement groups and the department;

(b) Promote community and governmental partnerships that enhance the salmon resource and habitat;

(c) Promote environmental ethics and watershed stewardship;

(d) Advocate for watershed management and restoration;

(e) Coordinate regional fisheries enhancement group workshops and training;

(f) Monitor and evaluate regional fisheries enhancement projects;

(g) Provide guidance to regional fisheries enhancement groups; and

(h) Develop recommendations to the director to address identified impediments to the success of regional fisheries enhancement groups.

(3)(a) The regional fisheries enhancement group advisory board shall develop recommendations for limitations on the amount of overhead that a regional fisheries enhancement group may charge from each of the following categories of funding provided to the group:

(i) Federal funds;

(ii) State funds;

(iii) Local funds; and

(iv) Private donations.

(b) The advisory board shall develop recommendations for limitations on the number and salary of paid employees that are employed by a regional fisheries enhancement group. The regional fisheries enhancement group advisory board

shall adhere to the founding principles for regional groups that emphasize the volunteer nature of the groups, maximization of field-related fishery resource benefits, and minimization of overhead.

(c) The advisory board shall evaluate and make recommendations for the limitation or elimination of commissions, finders fees, or other reimbursements to regional fisheries enhancement group employees.

~~((d) The regional fisheries enhancement group advisory board shall report to the appropriate legislative committees by January 1, 1999, on the board recommendations for overhead limitations, paid employee limitations, and commission limitations for regional fisheries enhancement groups.))~~

Sec. 110. RCW 75.50.160 and 1997 c 389 s 6 are each amended to read as follows:

The department and the department of transportation shall convene a fish passage barrier removal task force. The task force shall consist of one representative each from the department, the department of transportation, the department of ecology, tribes, cities, counties, a business organization, an environmental organization, regional fisheries enhancement groups, and other interested entities as deemed appropriate by the cochairs. The persons representing the department and the department of transportation shall serve as cochairs of the task force and shall appoint members to the task force. The task force shall make recommendations to expand the program in RCW 75.50.170 (as recodified by this act) to identify and expedite the removal of human-made or caused impediments to anadromous fish passage in the most efficient manner practical. Program recommendations shall include a funding mechanism and other necessary mechanisms to coordinate and prioritize state, tribal, local, and volunteer efforts within each water resource inventory area. A priority shall be given to projects that immediately increase access to available and improved spawning and rearing habitat for depressed, threatened, and endangered stocks. The department or the department of transportation may contract with cities and counties to assist in the identification and removal of impediments to anadromous fish passage.

~~((A report on the recommendations to develop a program to identify and remove fish passage barriers and any additional legislative action needed to implement the program shall be submitted to the appropriate standing committees of the legislature no later than December 1, 1997.))~~

Sec. 111. RCW 75.52.020 and 1993 sp.s. c 2 s 50 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Volunteer group" means any person or group of persons interested in or party to an agreement with the department relating to a cooperative fish or wildlife project.

(2) "Cooperative project" means a project conducted by a volunteer group that will benefit the fish, shellfish, game bird, nongame wildlife, or game animal

resources of the state and for which the benefits of the project, including fish and wildlife reared and released, are available to all citizens of the state. Indian tribes may elect to participate in cooperative fish and wildlife projects with the department.

~~((3) "Department" means the department of fish and wildlife.))~~

Sec. 112. RCW 75.52.050 and 1995 1st sp.s. c 2 s 42 are each amended to read as follows:

The commission shall establish by rule:

(1) The procedure for entering a cooperative agreement and the application forms for a permit to release fish or wildlife required by RCW 75.08.295 ~~((or 77.16.150))~~ (as recodified by this act). The procedure shall indicate the information required from the volunteer group as well as the process of review by the department. The process of review shall include the means to coordinate with other agencies and Indian tribes when appropriate and to coordinate the review of any necessary hydraulic permit approval applications.

(2) The procedure for providing within forty-five days of receipt of a proposal a written response to the volunteer group indicating the date by which an acceptance or rejection of the proposal can be expected, the reason why the date was selected, and a written summary of the process of review. The response should also include any suggested modifications to the proposal which would increase its likelihood of approval and the date by which such modified proposal could be expected to be accepted. If the proposal is rejected, the department must provide in writing the reasons for rejection. The volunteer group may request the director or the director's designee to review information provided in the response.

(3) The priority of the uses to which eggs, seed, juveniles, or brood stock are put. Use by cooperative projects shall be second in priority only to the needs of programs of the department or of other public agencies within the territorial boundaries of the state. Sales of eggs, seed, juveniles, or brood stock have a lower priority than use for cooperative projects.

(4) The procedure for ~~((notice in writing to a volunteer group of cause to revoke))~~ the director to notify a volunteer group that the agreement for the project is being revoked for cause and the procedure for revocation. Revocation shall be documented in writing to the volunteer group. Cause for revocation may include: (a) The unavailability of adequate biological or financial resources; (b) the development of unacceptable biological or resource management conflicts; or (c) a violation of agreement provisions. Notice of cause to revoke for a violation of agreement provisions may specify a reasonable period of time within which the volunteer group must comply with any violated provisions of the agreement.

(5) An appropriate method of distributing among volunteer groups fish, bird, or animal food or other supplies available for the program.

Sec. 113. RCW 75.52.070 and 1984 c 72 s 7 are each amended to read as follows:

(1) The volunteer group shall:

- (a) Provide care and diligence in conducting the cooperative project; and
- (b) Maintain accurately the required records of the project on forms provided by the department.

(2) The volunteer group shall acknowledge that fish and game reared in cooperative projects are public property and must be handled and released for the benefit of all citizens of the state. The fish and game are to remain public property until reduced to private ownership under rules of the ~~((department))~~ commission.

Sec. 114. RCW 75.52.100 and 1993 sp.s. c 2 s 52 are each amended to read as follows:

A salmon spawning channel shall be constructed on the Cedar river with the assistance and cooperation of the department. The department shall use existing personnel and the volunteer fisheries enhancement program outlined under chapter 75.52 RCW (as recodified by this act) to assist in the planning, construction, and operation of the spawning channel.

Sec. 115. RCW 75.52.110 and 1998 c 245 s 156 are each amended to read as follows:

The department shall chair a technical committee, which shall review the preparation of enhancement plans and construction designs for a Cedar river sockeye spawning channel. The technical committee shall consist of not more than eight members: One representative each from the department, national marine fisheries service, United States fish and wildlife service, and Muckleshoot Indian tribe; and four representatives from the public utility described in RCW 75.52.130 (as recodified by this act). The technical committee will be guided by a policy committee, also to be chaired by the department, which shall consist of not more than six members: One representative from the department, one from the Muckleshoot Indian trihe, and one from either the national marine fisheries service or the United States fish and wildlife service; and three representatives from the public utility described in RCW 75.52.130 (as recodified by this act). The policy committee shall oversee the operation and evaluation of the spawning channel. The policy committee will continue its oversight until the policy committee concludes that the channel is meeting the production goals specified in RCW 75.52.120 (as recodified by this act).

Sec. 116. RCW 75.52.130 and 1989 c 85 s 6 are each amended to read as follows:

The legislature recognizes that, if funding for planning, design, evaluation, construction, and operating expenses is provided by a public utility that diverts water for beneficial public use, and if the performance of the spawning channel meets the production goals described in RCW 75.52.120 (as recodified by this act), the spawning channel project will serve, at a minimum, as compensation for lost sockeye salmon spawning habitat upstream of the Landsburg diversion. The amount of funding to be supplied by ~~((said))~~ the utility will fully fund the total cost of planning, design, evaluation, and construction of the spawning channel.

Sec. 117. RCW 75.52.140 and 1989 c 85 s 7 are each amended to read as follows:

In order to provide operation and maintenance funds for the facility authorized by RCW 75.52.100 through 75.52.160 (as recodified by this act), the utility shall place two million five hundred thousand dollars in the state general fund Cedar river channel construction and operation account herein created. The interest from the fund shall be used for operation and maintenance of the spawning channel and any unused interest shall be added to the fund to increase the principal to cover possible future operation cost increases. The state treasurer may invest funds from the account as provided by law.

Sec. 118. RCW 75.52.160 and 1993 sp.s. c 2 s 54 are each amended to read as follows:

Should the requirements of RCW 75.52.100 through 75.52.160 (as recodified by this act) not be met, the department shall seek immediate legal clarification of the steps which must be taken to fully mitigate water diversion projects on the Cedar river.

Sec. 119. RCW 75.54.140 and 1998 c 191 s 28 are each amended to read as follows:

As provided in RCW 77.32.440, a portion of each saltwater and combination fishing license fee shall be deposited in the recreational fisheries enhancement account created in RCW 75.54.150 (as recodified by this act).

Sec. 120. RCW 75.54.150 and 1993 sp.s. c 2 s 98 are each amended to read as follows:

The recreational fisheries enhancement account is created in the state treasury. All receipts from RCW 75.54.140 (as recodified by this act) shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for recreational fisheries enhancement programs.

Sec. 121. RCW 75.56.050 and 1998 c 60 s 2 are each amended to read as follows:

(1) A pilot program for steelhead recovery is established in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum counties within the habitat area classified as evolutionarily significant unit 4 by the federal national marine fisheries service. The management board created under subsection (2) of this section is responsible for implementing the habitat portion of the approved steelhead recovery initiative and is empowered to receive and disburse funds for the approved steelhead recovery initiative. The management board created pursuant to this section shall constitute the ~~((regional council for this area responsible for fulfilling the requirements and exercising the powers of a regional council under chapter 246, Laws of 1998))~~ lead entity and the committee established under RCW 75.46.060 (as recodified by this act) responsible for fulfilling the requirements and exercising powers under this chapter.

(2) A management board consisting of fifteen voting members is created within evolutionarily significant unit 4. The members shall consist of one county commissioner or designee from each of the five participating counties selected by each county legislative authority; one member representing the cities contained within evolutionarily significant unit 4 as a voting member selected by the cities in evolutionarily significant unit 4; a representative of the Cowlitz Tribe appointed by the tribe; one state legislator elected from one of the legislative districts contained within evolutionarily significant unit 4 selected by that group of state legislators representing the area; five representatives to include at least one member who represents private property interests appointed by the five county commissioners or designees; one hydro utility representative nominated by hydro utilities and appointed by the five county commissioners or designees; and one representative nominated from the environmental community who resides in evolutionarily significant unit 4 appointed by the five county commissioners or designees. The board shall appoint and consult a technical advisory committee, which shall include four representatives of state agencies one each appointed by the directors of the departments of ecology, fish and wildlife, and transportation, and the commissioner of public lands. The board may also appoint additional persons to the technical advisory committee as needed. The chair of the board shall be selected from among the five county commissioners or designees and the legislator on the board. In making appointments under this subsection, the county commissioners shall consider recommendations of interested parties. Vacancies shall be filled in the same manner as the original appointments were selected. No action may be brought or maintained against any management board member, the management board, or any of its agents, officers, or employees for any noncontractual acts or omissions in carrying out the purposes of this section.

(3)(a) The management board shall participate in the development of a recovery plan to implement its responsibilities under (b) of this subsection. The management board shall consider local watershed efforts and activities as well as habitat conservation plans in the implementation of the recovery plan. Any of the participating counties may continue its own efforts for restoring steelhead habitat. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(b) The management board is responsible for implementing the habitat portions of the local government responsibilities of the lower Columbia steelhead conservation initiative approved by the state and the national marine fisheries service. The management board may work in cooperation with the state and the national marine fisheries service to modify the initiative, or to address habitat for other aquatic species that may be subsequently listed under the federal endangered species act. The management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(c) The management board shall prioritize as appropriate and approve projects and programs related to the recovery of lower Columbia river steelhead runs, including the funding of those projects and programs, and coordinate local government efforts as prescribed in the recovery plan. The management board shall establish criteria for funding projects and programs based upon their likely value in steelhead recovery. The management board may consider local economic impact among the criteria, but jurisdictional boundaries and factors related to jurisdictional population may not be considered as part of the criteria.

(d) The management board shall assess the factors for decline along each prioritized stream as listed in the lower Columbia steelhead conservation initiative. The management board is encouraged to take a stream-by-stream approach in conducting the assessment which utilizes state and local expertise, including volunteer groups, interest groups, and affected units of local government.

(4) The management board has the authority to hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to cities and counties about potential code changes and the development of programs and incentives upon request, pay all necessary expenses, and may choose a fiduciary agent. The management board shall report on its progress on a quarterly basis to the legislative bodies of the five participating counties and the state natural resource-related agencies. The management board shall prepare a final report at the conclusion of the pilot program describing its efforts and successes in implementing the habitat portion of the lower Columbia steelhead conservation initiative. The final report shall be transmitted to the appropriate committees of the legislature, the legislative bodies of the participating counties, and the state natural resource-related agencies.

(5) The pilot program terminates on July 1, 2002.

(6) For purposes of this section, "evolutionarily significant unit" means the habitat area identified for an evolutionarily significant unit of an aquatic species listed or proposed for listing as a threatened or endangered species under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.).

Sec. 122. RCW 75.58.010 and 1998 c 190 s 110 are each amended to read as follows:

(1) The director of agriculture and the director shall jointly develop a program of disease inspection and control for aquatic farmers as defined in RCW 15.85.020. The program shall be administered by the department under rules established under this section. The purpose of the program is to protect the aquaculture industry and wildstock fisheries from a loss of productivity due to aquatic diseases or maladies. As used in this section "diseases" means, in addition to its ordinary meaning, infestations of parasites or pests. The disease program may include, but is not limited to, the following elements:

- (a) Disease diagnosis;
- (b) Import and transfer requirements;
- (c) Provision for certification of stocks;

- (d) Classification of diseases by severity;
- (e) Provision for treatment of selected high-risk diseases;
- (f) Provision for containment and eradication of high-risk diseases;
- (g) Provision for destruction of diseased cultured aquatic products;
- (h) Provision for quarantine of diseased cultured aquatic products;
- (i) Provision for coordination with state and federal agencies;
- (j) Provision for development of preventative or control measures;
- (k) Provision for cooperative consultation service to aquatic farmers; and
- (l) Provision for disease history records.

(2) The commission shall adopt rules implementing this section. However, such rules shall have the prior approval of the director of agriculture and shall provide therein that the director of agriculture has provided such approval. The director of agriculture or the director's designee shall attend the rule-making hearings conducted under chapter 34.05 RCW and shall assist in conducting those hearings. The authorities granted the department by these rules and by RCW 75.08.080(1)(g), 75.24.080, 75.24.110, 75.28.125, 75.58.020, 75.58.030, and 75.58.040 (as recodified by this act) constitute the only authorities of the department to regulate private sector cultured aquatic products and aquatic farmers as defined in RCW 15.85.020. Except as provided in subsection (3) of this section, no action may be taken against any person to enforce these rules unless the department has first provided the person an opportunity for a hearing. In such a case, if the hearing is requested, no enforcement action may be taken before the conclusion of that hearing.

(3) The rules adopted under this section shall specify the emergency enforcement actions that may be taken by the department, and the circumstances under which they may be taken, without first providing the affected party with an opportunity for a hearing. Neither the provisions of this subsection nor the provisions of subsection (2) of this section shall preclude the department from requesting the initiation of criminal proceedings for violations of the disease inspection and control rules.

(4) A person shall not violate the rules adopted under subsection (2) or (3) of this section or violate RCW 75.58.040 (as recodified by this act).

(5) In administering the program established under this section, the department shall use the services of a pathologist licensed to practice veterinary medicine.

(6) The director in administering the program shall not place constraints on or take enforcement actions in respect to the aquaculture industry that are more rigorous than those placed on the department or other fish-rearing entities.

Sec. 123. RCW 75.58.020 and 1993 sp.s. c 2 s 56 are each amended to read as follows:

The directors of agriculture and fish and wildlife shall jointly adopt by rule, in the manner prescribed in RCW 75.58.010(2) (as recodified by this act), a schedule of user fees for the disease inspection and control program established under RCW 75.58.010 (as recodified by this act). The fees shall be established

such that the program shall be entirely funded by revenues derived from the user fees by the beginning of the 1987-89 biennium.

There is established in the state treasury an account known as the aquaculture disease control account which is subject to appropriation. Proceeds of fees charged under this section shall be deposited in the account. Moneys from the account shall be used solely for administering the disease inspection and control program established under RCW 75.58.010 (as recodified by this act).

Sec. 124. RCW 75.58.030 and 1993 sp.s. c 2 s 57 are each amended to read as follows:

(1) The director shall consult regarding the disease inspection and control program established under RCW 75.58.010 (as recodified by this act) with federal agencies and Indian tribes to assure protection of state, federal, and tribal aquatic resources and to protect private sector cultured aquatic products from disease that could originate from waters or facilities managed by those agencies.

(2) With regard to the program, the director may enter into contracts or interagency agreements for diagnostic field services with government agencies and institutions of higher education and private industry.

(3) The director shall provide for the creation and distribution of a roster of biologists having a ~~((speciality [specialty]))~~ specialty in the diagnosis or treatment of diseases of fish or shellfish. The director shall adopt rules specifying the qualifications which a person must have in order to be placed on the roster.

Repealed Sections

NEW SECTION. Sec. 125. The following acts or parts of acts are each repealed:

(1) RCW 75.08.010 (Fisheries Code) and 1983 1st ex.s. c 46 s 2 & 1955 c 12 s 75.08.010;

(2) RCW 75.08.011 (Definitions) and 1998 c 190 s 70, 1996 c 267 s 2, 1995 1st sp.s. c 2 s 6, & 1994 c 255 s 2;

(3) RCW 75.08.014 (Authority of director to administer department—Qualifications of director) and 1995 1st sp.s. c 2 s 22, 1993 sp.s. c 2 s 21, 1983 1st ex.s. c 46 s 6, & 1953 c 207 s 10;

(4) RCW 75.08.035 (Senior environmental corps—Department powers and duties) and 1993 sp.s. c 2 s 22 & 1992 c 63 s 11;

(5) RCW 75.08.274 (Taking food fish for propagation or scientific purposes—Permit required) and 1998 c 190 s 72, 1995 1st sp.s. c 2 s 15, 1983 1st ex.s. c 46 s 28, 1971 c 35 s 1, & 1955 c 12 s 75.16.010;

(6) RCW 75.10.070 (Service of summons and forfeiture if unable to prosecute violator) and 1983 1st ex.s. c 46 s 38 & 1955 c 12 s 75.36.030;

(7) RCW 75.10.160 (Enforcement of watercraft registration and boating safety education) and 1989 c 393 s 16;

(8) RCW 75.25.090 (Personal use fishing licenses—Fees) and 1993 c 215 s 1, 1989 c 305 s 5, & 1987 c 87 s 1;

- (9) RCW 75.25.160 (Recreational licenses—Penalties) and 1989 c 305 s 15, 1987 c 87 s 8, 1984 c 80 s 10, 1983 1st ex.s. c 46 s 100, & 1977 ex.s. c 327 s 16;
- (10) RCW 75.25.210 (Duplicate licenses, permits, tags, stamps, and catch record cards—Fees) and 1994 c 255 s 9;
- (11) RCW 75.28.012 (Licensing districts—Created) and 1993 c 20 s 3, 1983 1st ex.s. c 46 s 102, 1971 ex.s. c 283 s 2, & 1957 c 171 s 1;
- (12) RCW 75.28.335 (Wholesale fish dealers—Additional penalties) and 1985 c 248 s 8; and
- (13) RCW 75.30.160 (Whiting license required in designated areas) and 1998 e 190 s 103, 1993 c 340 s 38, & 1986 c 198 s 6.

Recodified Sections

NEW SECTION. **Sec. 126.** RCW 75.08.012, 75.08.013, 75.08.020, 75.08.090, and 75.08.110 are each recodified as sections in chapter 77.04 RCW.

NEW SECTION. **Sec. 127.** RCW 75.08.025, 75.08.040, 75.08.045, 75.08.055, 75.08.058, 75.08.065, 75.08.070, 75.08.080, 75.08.120, 75.08.160, 75.08.206, 75.08.208, 75.08.230, 75.08.235, 75.08.255, 75.08.265, 75.08.285, 75.08.295, and 75.08.300 are each recodified as sections in chapter 77.12 RCW.

NEW SECTION. **Sec. 128.** RCW 75.12.010, 75.12.015, 75.12.040, 75.12.132, 75.12.140, 75.12.155, 75.12.210, 75.12.230, 75.12.390, 75.12.440, and 75.12.650 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. **Sec. 129.** RCW 75.20.005, 75.20.015, 75.20.025, 75.20.040, 75.20.050, 75.20.060, 75.20.061, 75.20.090, 75.20.098, 75.20.100, 75.20.103, 75.20.104, 75.20.1041, 75.20.106, 75.20.108, 75.20.110, 75.20.130, 75.20.140, 75.20.150, 75.20.160, 75.20.170, 75.20.180, 75.20.190, 75.20.310, 75.20.320, 75.20.325, 75.20.330, 75.20.340, 75.20.350, and 77.12.830 are each recodified as sections in a new chapter added to Title 77 RCW.

NEW SECTION. **Sec. 130.** RCW 75.24.010, 75.24.030, 75.24.060, 75.24.065, 75.24.070, 75.24.080, 75.24.100, 75.24.110, 75.24.120, 75.24.130, 75.24.140, and 75.24.150 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. **Sec. 131.** RCW 75.28.010, 75.28.011, 75.28.014, 75.28.020, 75.28.030, 75.28.034, 75.28.040, 75.28.042, 75.28.044, 75.28.045, 75.28.046, 75.28.047, 75.28.048, 75.28.055, 75.28.095, 75.28.110, 75.28.113, 75.28.114, 75.28.116, 75.28.120, 75.28.125, 75.28.130, 75.28.132, 75.28.133, 75.28.280, 75.28.290, 75.28.295, 75.28.300, 75.28.302, 75.28.305, 75.28.315, 75.28.323, 75.28.328, 75.28.340, 75.28.690, 75.28.700, 75.28.710, 75.28.720, 75.28.730, 75.28.740, 75.28.750, 75.28.760, 75.28.770, 75.28.780, 75.28.900, 77.32.191, 77.32.197, 77.32.199, and 77.32.211 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. **Sec. 132.** RCW 75.30.015, 75.30.021, 75.30.050, 75.30.060, 75.30.065, 75.30.070, 75.30.090, 75.30.100, 75.30.120, 75.30.125,

75.30.130, 75.30.140, 75.30.170, 75.30.180, 75.30.210, 75.30.220, 75.30.230, 75.30.240, 75.30.250, 75.30.260, 75.30.270, 75.30.280, 75.30.290, 75.30.300, 75.30.310, 75.30.320, 75.30.330, 75.30.350, 75.30.360, 75.30.370, 75.30.380, 75.30.390, 75.30.410, 75.30.420, 75.30.430, 75.30.440, 75.30.450, 75.30.460, 75.30.470, 75.30.480, 75.30.490, and 75.30.500 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. Sec. 133. A new chapter is added to Title 77 RCW and is named "Compacts and other agreements." The following sections are recodified under the following subchapter headings:

(1) "Columbia river compact" as follows:

RCW 75.40.010; and

RCW 75.40.020.

(2) "Pacific marine fisheries compact" as follows:

RCW 75.40.030; and

RCW 75.40.040.

(3) "Coastal ecosystems compact" as follows:

RCW 75.40.100; and

RCW 75.40.110.

(4) "Wildlife violator compact" as follows:

RCW 77.17.010;

RCW 77.17.020; and

RCW 77.17.030.

(5) "Snake river boundary" as follows:

RCW 77.12.450;

RCW 77.12.470;

RCW 77.12.480; and

RCW 77.12.490.

(6) "Miscellaneous" as follows:

RCW 75.40.060;

RCW 77.12.430; and

RCW 77.12.440.

NEW SECTION. Sec. 134. RCW 75.44.100, 75.44.110, 75.44.120, 75.44.130, 75.44.140, and 75.44.150 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. Sec. 135. RCW 75.46.005, 75.46.010, 75.46.030, 75.46.040, 75.46.050, 75.46.060, 75.46.070, 75.46.080, 75.46.090, 75.46.100, 75.46.110, 75.46.120, 75.46.150, 75.46.160, 75.46.170, 75.46.180, 75.46.190, 75.46.200, 75.46.210, 75.46.300, 75.46.350, 75.56.050, and 75.46.900 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. Sec. 136. RCW 75.48.020, 75.48.040, 75.48.050, 75.48.060, 75.48.070, 75.48.080, 75.48.100, and 75.48.110 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. Sec. 137. RCW 75.50.010, 75.50.020, 75.50.030, 75.50.040, 75.50.060, 75.50.070, 75.50.080, 75.50.090, 75.50.100, 75.50.105, 75.50.110, 75.50.115, 75.50.125, 75.50.130, 75.50.150, 75.50.160, 75.50.165, 75.50.170, 75.50.180, 75.50.190, 75.08.245, 75.08.400, 75.08.410, 75.08.420, 75.08.430, 75.08.440, 75.08.450, 75.08.500, 75.08.510, 75.08.520, 75.08.530, and 75.50.900 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. Sec. 138. RCW 75.52.010, 75.52.020, 75.52.030, 75.52.035, 75.52.040, 75.52.050, 75.52.060, 75.52.070, 75.08.047, 75.52.080, 75.52.100, 75.52.110, 75.52.120, 75.52.130, 75.52.140, 75.52.150, 75.52.160, and 75.52.900 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. Sec. 139. RCW 75.54.005, 75.54.010, 75.54.020, 75.54.030, 75.54.040, 75.54.050, 75.54.060, 75.54.070, 75.54.080, 75.54.090, 75.54.100, 75.54.110, 75.54.120, 75.54.130, 75.54.140, 75.54.150, 75.54.900, and 75.54.901 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. Sec. 140. RCW 75.56.010, 75.56.020, 75.56.030, 75.56.040, 75.56.900, and 75.56.905 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. Sec. 141. RCW 75.58.010, 75.58.020, 75.58.030, and 75.58.040 are each recodified as sections in a new chapter in Title 77 RCW.

NEW SECTION. Sec. 142. RCW 75.25.092 is recodified as a new section in chapter 77.32 RCW.

NEW SECTION. Sec. 143. RCW 75.10.150 is recodified as a new section in chapter 77.15 RCW.

NEW SECTION. Sec. 144. RCW 75.25.901, 75.25.902, 75.30.055, 75.98.005, 75.98.006, 75.98.007, and 75.98.030 are each decodified.

PART II
TITLE 77
Amendments

Sec. 201. RCW 77.04.010 and 1990 c 84 s 1 are each amended to read as follows:

This title is known and may be cited as "Fish and Wildlife Code of the State of Washington."

Sec. 202. RCW 77.04.020 and 1996 c 267 s 32 are each amended to read as follows:

The department consists of the state fish and wildlife commission and the director. ~~((The director is responsible for the administration and operation of the department, subject to the provisions of this title.))~~ The commission may delegate to the director any of the powers and duties vested in the commission. ~~((The director shall perform the duties prescribed by law and shall carry out the basic goals and objectives prescribed under RCW 77.04.055.))~~

Sec. 203. RCW 77.04.030 and 1994 c 264 s 52 are each amended to read as follows:

The fish and wildlife commission consists of nine registered voters of the state. In January of each odd-numbered year, the governor shall appoint with the advice and consent of the senate two registered voters to the commission to serve for terms of six years from that January or until their successors are appointed and qualified. If a vacancy occurs on the commission prior to the expiration of a term, the governor shall appoint a registered voter within sixty days to complete the term. Three members shall be residents of that portion of the state lying east of the summit of the Cascade mountains, and three shall be residents of that portion of the state lying west of the summit of the Cascade mountains. Three additional members shall be appointed at-large (~~effective July 1, 1993; one of whom shall serve a one and one-half year term to end December 31, 1994; one of whom shall serve a three and one-half year term to end December 31, 1996; and one of whom shall serve a five and one-half year term to end December 31, 1998. Thereafter all members are to serve a six-year term~~). No two members may be residents of the same county. The legal office of the commission is at the administrative office of the department in Olympia.

Sec. 204. RCW 77.04.055 and 1995 1st sp.s. c 2 s 4 are each amended to read as follows:

(1) In establishing policies to preserve, protect, and perpetuate wildlife, fish, and wildlife and fish habitat, the commission shall meet annually with the governor to:

- (a) Review and prescribe basic goals and objectives related to those policies; and
- (b) Review the performance of the department in implementing fish and wildlife policies.

The commission shall maximize fishing, hunting, and outdoor recreational opportunities compatible with healthy and diverse fish and wildlife populations.

(2) The commission shall establish hunting, trapping, and fishing seasons and prescribe the time, place, manner, and methods that may be used to harvest or enjoy game fish and wildlife.

(3) The commission shall establish provisions regulating food fish and shellfish as provided in RCW 75.08.080 (as recodified by this act).

(4) The commission shall have final approval authority for tribal, interstate, international, and any other department agreements relating to fish and wildlife.

(5) The commission shall adopt rules to implement the state's fish and wildlife laws.

(6) The commission shall have final approval authority for the department's budget proposals.

(7) The commission shall select its own staff and shall appoint the director of the department. The director and commission staff shall serve at the pleasure of the commission.

Sec. 205. RCW 77.04.080 and 1995 1st sp.s. c 2 s 5 are each amended to read as follows:

Persons eligible for appointment as director shall have practical knowledge of the habits and distribution of fish and wildlife. The director shall supervise the administration and operation of the department and perform the duties prescribed by law and delegated by the commission. The director shall carry out the basic goals and objectives prescribed under RCW 77.04.055. The director may appoint and employ necessary personnel. The director may delegate, in writing, to department personnel the duties and powers necessary for efficient operation and administration of the department.

Only persons having general knowledge of the fisheries and wildlife resources and of the commercial and recreational fishing industry in this state are eligible for appointment as director. The director shall not have a financial interest in the fishing industry or a directly related industry. The director shall receive the salary fixed by the governor under RCW 43.03.040.

The director is the ex officio secretary of the commission and shall attend its meetings and keep a record of its business.

~~((The director may appoint and employ necessary departmental personnel. The director may delegate to department personnel the duties and powers necessary for efficient operation and administration of the department.))~~

Sec. 206. RCW 77.04.100 and 1993 sp.s. c 2 s 65 are each amended to read as follows:

The director shall develop proposals to reinstate the natural salmon and steelhead trout fish runs in the Tilton and upper Cowlitz rivers in accordance with RCW 75.08.020(3) (as recodified by this act).

Sec. 207. RCW 77.08.010 and 1998 c 190 s 111 are each amended to read as follows:

As used in this title ~~((or Title 75 RCW))~~ or rules adopted ~~((pursuant to those))~~ under this title((s)), unless the context clearly requires otherwise:

- (1) "Director" means the director of fish and wildlife.
- (2) "Department" means the department of fish and wildlife.
- (3) "Commission" means the state fish and wildlife commission.
- (4) "Person" means and includes an individual((:)); a corporation((:)); a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(5) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce ~~((laws))~~ this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(6) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(9) "To fish," "to harvest," and "to take," and ~~((its))~~ their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, ~~((or))~~ game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(11) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, or game fish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, or possess by rule of the commission as an open season.

(12) "Closed area" means a place where the hunting of some species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing for game fish is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia ~~((old world rats and mice))~~, or those fish, shellfish, and marine

invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia (~~old world rats and mice~~)).

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Person of disability" means a permanently disabled person who is not ambulatory without the assistance of a wheelchair, crutches, or similar devices.

(28) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(29) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(30) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(31) "Senior" means a person seventy years old or older.

(32) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(33) "Saltwater" means those marine waters seaward of river mouths.

(34) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(35) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(36) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(37) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(38) "Resident" means a person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state.

(39) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(40) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(41) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(42) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(43) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(44) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(45) "Fishery" means the taking of one or more particular species of food fish or shellfish with particular gear in a particular geographical area.

(46) "Limited-entry license" means a license subject to a license limitation program established in chapter 75.30 RCW (as recodified by this act).

(47) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(48) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

NEW SECTION. Sec. 208. A new section is added to chapter 77.08 RCW to read as follows:

"Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that have been classified and that shall not be fished for except as authorized by rule of the commission. The term "food fish" includes all stages of development and the bodily parts of food fish species.

NEW SECTION. Sec. 209. A new section is added to chapter 77.08 RCW to read as follows:

"Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in RCW 77.08.020, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

Sec. 210. RCW 77.12.010 and 1985 c 438 s 1 are each amended to read as follows:

~~((Wildlife is the property of the state. The department shall preserve, protect, and perpetuate wildlife. Game animals, game birds, and game fish may be taken only at times or places, or in manners or quantities as in the judgment of the commission maximizes public recreational opportunities without impairing the supply of wildlife.))~~

The commission shall not adopt rules that categorically prohibit fishing with bait or artificial lures in streams, rivers, beaver ponds, and lakes except that the commission may adopt rules and regulations restricting fishing methods upon a determination by the director that an individual body of water or part thereof clearly requires a fishing method prohibition to conserve or enhance the fisheries resource or to provide selected fishing alternatives. ~~((The commission shall attempt to maximize the public recreational fishing opportunities of all citizens, particularly juvenile, handicapped, and senior citizens.~~

~~—Nothing contained herein shall be construed to infringe on the right of a private property owner to control the owner's private property.))~~

Sec. 211. RCW 77.12.035 and 1995 c 370 s 1 are each amended to read as follows:

The ~~((department))~~ commission shall protect grizzly bears and develop management programs on publicly owned lands that will encourage the natural regeneration of grizzly bears in areas with suitable habitat. Grizzly bears shall not be transplanted or introduced into the state. Only grizzly bears that are native to Washington state may be utilized by the department for management programs. The department is directed to fully participate in all discussions and negotiations with federal and state agencies relating to grizzly bear management and shall fully communicate, support, and implement the policies of this section.

Sec. 212. RCW 77.12.055 and 1998 c 190 s 112 are each amended to read as follows:

(1) Fish and wildlife officers and ex officio fish and wildlife officers shall enforce this title, ~~((Title 75 RCW,))~~ rules of the department, and other statutes as prescribed by the legislature. However, when acting within the scope of these duties and when an offense occurs in the presence of the fish and wildlife officer who is not an ex officio fish and wildlife officer, the fish and wildlife officer may enforce all criminal laws of the state. The fish and wildlife officer must have successfully completed the basic law enforcement academy course sponsored by the criminal justice training commission, or a course approved by the department and the criminal justice training commission and provided by the department or the criminal justice training commission, prior to enforcing the criminal laws of the state.

(2) Fish and wildlife officers are peace officers.

(3) Any liability or claim of liability under chapter 4.92 RCW that arises out of the exercise or alleged exercise of authority by a fish and wildlife officer rests with the department unless the fish and wildlife officer acts under the direction and control of another agency or unless the liability is otherwise assumed under an agreement between the department and another agency.

(4) Fish and wildlife officers may serve and execute warrants and processes issued by the courts.

(5) Fish and wildlife officers may enforce RCW 79.01.805 and 79.01.810.

(6) Fish and wildlife officers are authorized to enforce all provisions of chapter 88.02 RCW and any rules adopted under that chapter, and the provisions of RCW 79A.05.310 and any rules adopted under that section.

(7) To enforce the laws of this title ~~((and Title 75 RCW))~~, fish and wildlife officers may call to their aid any ex officio fish and wildlife officer or citizen and that person shall render aid.

Sec. 213. RCW 77.12.080 and 1998 c 190 s 114 are each amended to read as follows:

Fish and wildlife officers and ex officio fish and wildlife officers may arrest without warrant persons found violating the law or rules adopted pursuant to this title ~~((and Title 75 RCW))~~.

Sec. 214. RCW 77.12.090 and 1998 c 190 s 115 are each amended to read as follows:

Fish and wildlife officers and ex officio fish and wildlife officers may make a reasonable search without warrant of a vessel, ~~((container, or))~~ conveyances, vehicles, containers, packages, ~~((game baskets, game coats,))~~ or other receptacles for fish and wildlife ~~((, or tents, camps, or similar places))~~ which they have reason to believe contain evidence of a violation of law or rules adopted pursuant to this title ~~((or Title 75 RCW))~~ and seize evidence as needed for law enforcement. This authority does not extend to quarters in a boat, building, or other property used exclusively as a private domicile, does not extend to transitory residences in which

a person has a reasonable expectation of privacy, and does not allow search and seizure without a warrant if the thing or place is protected from search without warrant within the meaning of Article I, section 7 of the state Constitution. Seizure of property as evidence of a crime does not preclude seizure of the property ((if authorized)) for forfeiture as authorized by law.

Sec. 215. RCW 77.12.103 and 1993 sp.s. c 2 s 68 are each amended to read as follows:

~~(1) ((The burden of proof of any exemption or exception to seizure or forfeiture of personal property involved with wildlife offenses is upon the person claiming it.~~

~~—(2))~~ An authorized state, county, or municipal officer may be subject to civil liability under RCW ~~((77.12.104))~~ 77.15.070 for willful misconduct or gross negligence in the performance of his or her duties.

~~((3))~~ (2) The director, the fish and wildlife commission, or the department may be subject to civil liability for their willful or reckless misconduct in matters involving the seizure and forfeiture of personal property involved with fish or wildlife offenses.

Sec. 216. RCW 77.12.170 and 1998 c 191 s 38 and 1998 c 87 s 2 are each reenacted and amended to read as follows:

(1) There is established in the state treasury the state wildlife fund which consists of moneys received from:

- (a) Rentals or concessions of the department;
- (b) The sale of real or personal property held for department purposes;
- (c) The sale of licenses, permits, tags, stamps, and punchcards required by this title, except annual resident adult saltwater and all shellfish licenses, which shall be deposited into the state general fund;
- (d) Fees for informational materials published by the department;
- (e) Fees for personalized vehicle license plates as provided in chapter 46.16 RCW;
- (f) Articles or wildlife sold by the director under this title;
- (g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320 or 77.32.380;
- (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;
- (i) The sale of personal property seized by the department for food fish, shellfish, or wildlife violations; and
- (j) The department's share of revenues from auctions and raffles authorized by the commission.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife fund.

Sec. 217. RCW 77.12.204 and 1993 sp.s. c 4 s 6 are each amended to read as follows:

The department of fish and wildlife shall implement practices necessary to meet the standards developed under RCW 79.01.295 on agency-owned and managed agricultural and grazing lands. The standards may be modified on a site-specific basis as necessary and as determined by the department of ~~((fisheries or))~~ fish and wildlife, for species that these agencies respectively manage, to achieve the goals established under RCW 79.01.295(1). Existing lessees shall be provided an opportunity to participate in any site-specific field review. Department agricultural and grazing leases issued after December 31, 1994, shall be subject to practices to achieve the standards that meet those developed pursuant to RCW 79.01.295.

This section shall in no way prevent the department of fish and wildlife from managing its lands ~~((to accomplish its statutory mandate pursuant to RCW 77.12.010, nor shall it prevent the department from managing its lands))~~ according to the provisions of RCW 75.08.012, 77.12.210, or rules adopted pursuant to this chapter.

Sec. 218. RCW 77.12.210 and 1987 c 506 s 30 are each amended to read as follows:

The director shall maintain and manage real or personal property owned, leased, or held by the department and shall control the construction of buildings, structures, and improvements in or on the property. The director may adopt rules for the operation and maintenance of the property.

The commission may authorize the director to sell, lease, convey, or grant concessions upon real or personal property under the control of the department. This includes the authority to sell timber, gravel, sand, and other materials or products from real property held by the department ~~((and may authorize the director)), and~~ to sell or lease the department's real or personal property or grant concessions or rights of way for roads or utilities in the property. Oil and gas resources owned by the state which lie below lands owned, leased, or held by the department shall be offered for lease by the commissioner of public lands pursuant to chapter 79.14 RCW with the proceeds being deposited in the state wildlife fund: PROVIDED, That the commissioner of public lands shall condition such leases at the request of the department to protect wildlife and its habitat.

If the commission determines that real or personal property held by the department cannot be used advantageously by the department, the director may dispose of that property if it is in the public interest.

If the state acquired real property with use limited to specific purposes, the director may negotiate terms for the return of the property to the donor or grantor. Other real property shall be sold to the highest bidder at public auction. After appraisal, notice of the auction shall be published at least once a week for two successive weeks in a newspaper of general circulation within the county where the property is located at least twenty days prior to sale.

Proceeds from the sales shall be deposited in the state wildlife fund.

Sec. 219. RCW 77.12.220 and 1987 c 506 s 31 are each amended to read as follows:

For purposes of this title, the commission may make agreements to obtain real or personal property or to transfer or convey property held by the state to the United States or its agencies or instrumentalities, ~~((political-subdivisions))~~ units of local government of this state, public service companies, or other persons, if in the judgment of the commission and the attorney general the transfer and conveyance is consistent with public interest. For purposes of this section, "local government" means any city, town, county, special district, municipal corporation, or quasi-municipal corporation.

If the commission agrees to a transfer or conveyance under this section or to a sale or return of real property under RCW 77.12.210, the director shall certify, with the attorney general, to the governor that the agreement has been made. The certification shall describe the real property. The governor then may execute and the secretary of state attest and deliver to the appropriate entity or person the instrument necessary to fulfill the agreement.

Sec. 220. RCW 77.12.250 and 1980 c 78 s 42 are each amended to read as follows:

The director, ~~((wildlife-agents))~~ fish and wildlife officers, ex officio ~~((wildlife agents))~~ fish and wildlife officers, and department employees may enter upon lands or waters and remain there while performing their duties without liability for trespass. It is lawful for aircraft operated by the department to land and take off from beaches or waters of the state.

Sec. 221. RCW 77.12.315 and 1987 c 506 s 40 are each amended to read as follows:

If the director determines that a severe problem exists in an area of the state because deer and elk are being pursued, harassed, attacked or killed by dogs, the director may declare by emergency rule that an emergency exists and specify the area where it is lawful for fish and wildlife ~~((agents))~~ officers to take into custody or destroy the dogs if necessary. Fish and wildlife ~~((agents))~~ officers who take into custody or destroy a dog pursuant to this section are immune from civil or criminal liability arising from their actions.

Sec. 222. RCW 77.12.470 and 1980 c 78 s 63 are each amended to read as follows:

To enforce RCW 77.12.480 and 77.12.490 (as recodified by this act), courts in the counties contiguous to the boundary waters, fish and wildlife ~~((agents))~~ officers, and ex officio fish and wildlife ~~((agents))~~ officers have jurisdiction over the boundary waters to the furthest shoreline. This jurisdiction is concurrent with the courts and law enforcement officers of Idaho.

Sec. 223. RCW 77.12.480 and 1980 c 78 s 64 are each amended to read as follows:

The taking of wildlife from the boundary waters or islands of the Snake river shall be in accordance with the wildlife laws of the respective states. Fish and wildlife ((agents)) officers and ex officio fish and wildlife ((agents)) officers shall honor the license of either state and the right of the holder to take wildlife from the boundary waters and islands in accordance with the laws of the state issuing the license.

Sec. 224. RCW 77.12.490 and 1980 c 78 s 65 are each amended to read as follows:

The purpose of RCW 77.12.450 through 77.12.490 (as recodified by this act) is to avoid the conflict, confusion, and difficulty of locating the state boundary in or on the boundary waters and islands of the Snake river. These sections do not allow the holder of a Washington license to fish or hunt on the shoreline, sloughs, or tributaries on the Idaho side, nor allow the holder of an Idaho license to fish or hunt on the shoreline, sloughs, or tributaries on the Washington side.

Sec. 225. RCW 77.12.610 and 1982 c 155 s 1 are each amended to read as follows:

The purposes of RCW 77.12.610 through 77.12.630 (~~and 77.16.610~~) are to facilitate the department's gathering of biological data for managing wildlife, fish, and shellfish resources of this state and to protect (~~wildlife~~) these resources by assuring compliance with Title 77 RCW, and rules adopted thereunder, in a manner designed to minimize inconvenience to the public.

Sec. 226. RCW 77.12.620 and 1982 c 155 s 2 are each amended to read as follows:

The department is authorized to require hunters and fishermen occupying a motor vehicle approaching or entering a check station to stop and produce for inspection: (1) Any wildlife, fish, shellfish, or seaweed in their possession; (2) licenses, permits, tags, stamps, or (~~punchcards~~) catch record cards, required under Title 77 RCW, or rules adopted thereunder. For these purposes, the department is authorized to operate check stations which shall be plainly marked by signs, operated by at least one uniformed fish and wildlife ((agent)) officer, and operated in a safe manner.

Sec. 227. RCW 77.12.630 and 1982 c 155 s 4 are each amended to read as follows:

The powers conferred by RCW 77.12.610 through 77.12.630 (~~and 77.16.610~~) are in addition to all other powers conferred by law upon the department. Nothing in RCW 77.12.610 through 77.12.630 (~~and 77.16.610~~) shall be construed to prohibit the department from operating wildlife information stations at which persons shall not be required to stop and report, or from executing arrests, searches, or seizures otherwise authorized by law.

Sec. 228. RCW 77.12.655 and 1990 c 84 s 3 are each amended to read as follows:

The department, in accordance with chapter 34.05 RCW, shall adopt and enforce necessary rules defining the extent and boundaries of habitat buffer zones for bald eagles. Rules shall take into account the need for variation of the extent of the zone from case to case, and the need for protection of bald eagles. The rules shall also establish guidelines and priorities for purchase or trade and establishment of conservation easements and/or leases to protect such designated properties. The department shall also adopt rules to provide adequate notice to property owners of their options under RCW 77.12.650 (~~through 77.12.655~~) and this section.

Sec. 229. RCW 77.12.830 and 1997 c 425 s 3 are each amended to read as follows:

(1) Beginning in January 1998, the department of fish and wildlife and the department of natural resources shall implement a habitat incentives program based on the recommendations of federally recognized Indian tribes, landowners, the regional fisheries enhancement groups, the timber, fish, and wildlife cooperators, and other interested parties. The program shall allow a private landowner to enter into an agreement with the departments to enhance habitat on the landowner's property for food fish, game fish, or other wildlife species. In exchange, the landowner shall receive state regulatory certainty with regard to future applications for hydraulic project approval or a forest practices permit on the property covered by the agreement. The overall goal of the program is to provide a mechanism that facilitates habitat development on private property while avoiding an adverse state regulatory impact to the landowner at some future date. A single agreement between the departments and a landowner may encompass up to one thousand acres. A landowner may enter into multiple agreements with the departments, provided that the total acreage covered by such agreements with a single landowner does not exceed ten thousand acres. The departments are not obligated to enter into an agreement unless the departments find that the agreement is in the best interest of protecting fish or wildlife species or their habitat.

(2) A habitat incentives agreement shall be in writing and shall contain at least the following: A description of the property covered by the agreement, an expiration date, a description of the condition of the property prior to the implementation of the agreement, and other information needed by the landowner and the departments for future reference and decisions.

(3) As part of the agreement, the department of fish and wildlife may stipulate the factors that will be considered when the department evaluates a landowner's application for hydraulic project approval under RCW 75.20.100 or 75.20.103 (as recodified by this act) on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with the department of natural resources and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of hydraulic project approval shall be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(4) As part of the agreement, the department of natural resources may stipulate the factors that will be considered when the department evaluates a landowner's application for a forest practices permit under chapter 76.09 RCW on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with the department of fish and wildlife and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of forest practices permits shall be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(5) The agreement is binding on and may be used by only the landowner who entered into the agreement with the department. The agreement shall not be appurtenant with the land. However, if a new landowner chooses to maintain the habitat enhancement efforts on the property, the new landowner and the departments may jointly choose to retain the agreement on the property.

(6) If the departments receive multiple requests for agreements with private landowners under the habitat incentives program, the departments shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources.

Sec. 230. RCW 77.12.858 and 1999 c 342 s 6 are each amended to read as follows:

All receipts from the salmon stamp program created under RCW 77.12.850 through 77.12.860 must be deposited into the regional fisheries enhancement salmonid recovery account created under RCW 75.50.125 (as recodified by this act). Expenditures from the account may be used only for the purposes specified in RCW 75.50.125 (as recodified by this act) and chapter 342, Laws of 1999. The department shall report biennially to the legislature on the amount of money the salmon stamp program has generated.

Sec. 231. RCW 77.15.070 and 1998 c 190 s 69 are each amended to read as follows:

(1) Fish and wildlife officers and ex officio fish and wildlife officers may seize without warrant boats, airplanes, vehicles, motorized implements, conveyances, gear, appliances, or other articles they have probable cause to believe have been held with intent to violate or used in violation of this ((chapter)) title or rule of the commission or director. However, fish and wildlife officers or ex officio fish and wildlife officers may not seize any item or article, other than for evidence, if under the circumstances, it is reasonable to conclude that the violation was inadvertent. The property seized is subject to forfeiture to the state under this section regardless of ownership. Property seized may be recovered by its owner by depositing into court a cash bond equal to the value of the seized property but not more than twenty-five thousand dollars. Such cash bond is subject to forfeiture in lieu of the property. Forfeiture of property seized under this section is a civil forfeiture against property and is intended to be a remedial civil sanction.

(2) In the event of a seizure of property under this section, jurisdiction to begin the forfeiture proceedings shall commence upon seizure. Within fifteen days following the seizure, the seizing authority shall serve a written notice of intent to forfeit property on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the fifteen-day period following the seizure.

(3) Persons claiming a right of ownership or right to possession of property are entitled to a hearing to contest forfeiture. Such a claim shall specify the claim of ownership or possession and shall be made in writing and served on the director within forty-five days of the seizure. If the seizing authority has complied with notice requirements and there is no claim made within forty-five days, then the property shall be forfeited to the state.

(4) If any person timely serves the director with a claim to property, the person shall be afforded an opportunity to be heard as to the person's claim or right. The hearing shall be before the director or director's designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that a person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the property seized is more than five thousand dollars.

(5) The hearing to contest forfeiture and any subsequent appeal shall be as provided for in ~~((Title 34 RCW))~~ chapter 34.05 RCW, the administrative procedure act. The seizing authority has the burden to demonstrate that it had reason to believe the property was held with intent to violate or was used in violation of this title or rule of the commission or director. The person contesting forfeiture has the burden of production and proof by a preponderance of evidence that the person owns or has a right to possess the property and:

(a) That the property was not held with intent to violate or used in violation of this title ~~((or Title 75 RCW))~~; or

(b) If the property is a boat, airplane, or vehicle, that the illegal use or planned illegal use of the boat, airplane, or vehicle occurred without the owner's knowledge or consent, and that the owner acted reasonably to prevent illegal uses of such boat, airplane, or vehicle.

(6) A forfeiture of a conveyance encumbered by a perfected security interest is subject to the interest of the secured party if the secured party neither had knowledge ~~((or))~~ of nor consented to the act or omission. No security interest in seized property may be perfected after seizure.

(7) If seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to the agency for the use of enforcing this title, or sell such property, and deposit the proceeds to the wildlife fund, as provided for in RCW 77.12.170.

NEW SECTION. **Sec. 232.** A new section is added to chapter 77.15 RCW to read as follows:

Fish and wildlife officers and ex officio fish and wildlife officers may seize without a warrant wildlife, fish, and shellfish they have probable cause to believe have been taken, transported, or possessed in violation of this title or rule of the commission or director.

Sec. 233. RCW 77.15.080 and 1998 c 190 s 113 are each amended to read as follows:

Based upon articulable facts that a person is engaged in fishing or hunting activities, fish and wildlife officers have the authority to temporarily stop the person and check for valid licenses, tags, permits, stamps, or catch record cards, and to inspect all fish and wildlife in possession as well as the equipment being used to ensure compliance with the requirements of this title (~~and Title 75 RCW~~).

Sec. 234. RCW 77.15.090 and 1998 c 190 s 117 are each amended to read as follows:

On a showing of probable cause that there has been a violation of any fish or wildlife law of the state of Washington, or upon a showing of probable cause to believe that evidence of such violation may be found at a place, a court shall issue a search warrant or arrest warrant. Fish and wildlife officers may execute any such arrest or search warrant reasonably necessary to their duties under this title (~~or Title 75 RCW~~) and may seize fish and wildlife or any evidence of a crime and the fruits or instrumentalities of a crime as provided by warrant. The court may have a building, enclosure, vehicle, vessel, container, or receptacle opened or entered and the contents examined.

Sec. 235. RCW 77.15.100 and 1998 c 190 s 63 are each amended to read as follows:

(1) Unless otherwise provided in this title (~~or Title 75 RCW~~), fish, shellfish, or wildlife unlawfully taken or possessed, or involved in a violation shall be forfeited to the state upon conviction. Unless already held by, sold, destroyed, or disposed of by the department, the court shall order such fish or wildlife to be delivered to the department. Where delay will cause loss to the value of the property and a ready wholesale buying market exists, the department may sell property to a wholesale buyer at a fair market value.

(2) (~~The department may use, sell, or destroy any other~~) When seized property is forfeited ((by the court or)) to the department, the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release the property to the agency for the use of enforcing this title, or sell such property and deposit the proceeds into the state wildlife fund established under RCW 77.12.170. Any sale of other property shall be at public auction or after public advertisement reasonably designed to obtain the highest price. The time, place, and manner of holding the sale shall be determined by the director. The director may contract for the sale to

be through the department of general administration as state surplus property, or, except where not justifiable by the value of the property, the director shall publish notice of the sale once a week for at least two consecutive weeks before the sale in at least one newspaper of general circulation in the county in which the sale is to be held. ~~((Proceeds of the sale shall be deposited in the state treasury to be credited to the state wildlife fund.))~~

Sec. 236. RCW 77.15.120 and 1998 c 190 s 13 are each amended to read as follows:

(1) A person is guilty of unlawful taking of endangered fish or wildlife in the second degree if the person hunts, fishes, possesses, maliciously harasses or kills fish or wildlife, or maliciously destroys the nests or eggs of fish or wildlife and the fish or wildlife is designated by the commission as endangered, and the taking has not been authorized by rule of the commission.

(2) A person is guilty of unlawful taking of endangered fish or wildlife in the first degree if the person has been:

(a) Convicted under subsection (1) of this section or convicted of any crime under this title involving the killing, possessing, harassing, or harming of endangered fish or wildlife; and

(b) Within five years of the date of the prior conviction the person commits the act described by subsection (1) of this section.

(3)(a) Unlawful taking of endangered fish or wildlife in the second degree is a gross misdemeanor.

(b) Unlawful taking of endangered fish or wildlife in the first degree is a class C felony. The department shall revoke any licenses or tags used in connection with the crime and order the person's privileges to hunt, fish, trap, or obtain licenses under this title ~~((and Title 75 RCW))~~ to be suspended for two years.

Sec. 237. RCW 77.15.160 and 1998 c 190 s 17 are each amended to read as follows:

A person is guilty of an infraction, which shall be cited and punished as provided under chapter 7.84 RCW, if the person:

(1) Fails to immediately record a catch of fish or shellfish on a catch record card required by RCW ~~((75.25.190 or 77.32.050))~~ 77.32.430, or required by rule of the commission under this title ~~((or Title 75 RCW))~~; or

(2) Fishes for personal use using barbed hooks in violation of any rule; or

(3) Violates any other rule of the commission or director that is designated by rule as an infraction.

NEW SECTION. **Sec. 238.** A new section is added to chapter 77.15 RCW to read as follows:

Any person who is damaged by any act prohibited in RCW 77.15.210 may bring a civil action to enjoin further violations, and recover damages sustained, including a reasonable attorneys' fee. The trial court may increase the award of damages to an amount not to exceed three times the damages sustained. A party seeking civil damages under this section may recover upon proof of a violation by

a preponderance of the evidence. The state of Washington may bring a civil action to enjoin violations of this section.

Sec. 239. RCW 77.15.300 and 1998 c 190 s 52 are each amended to read as follows:

(1) A person is guilty of unlawfully undertaking hydraulic project activities if the person constructs any form of hydraulic project or performs other work on a hydraulic project and:

(a) Fails to have a hydraulic project approval required under chapter 75.20 RCW (as recodified by this act) for such construction or work; or

(b) Violates any requirements or conditions of the hydraulic project approval for such construction or work.

(2) Unlawfully undertaking hydraulic project activities is a gross misdemeanor.

Sec. 240. RCW 77.15.310 and 1998 c 190 s 53 are each amended to read as follows:

(1) A person is guilty of unlawful failure to use or maintain an approved fish guard on a diversion device if the person owns, controls, or operates a device used for diverting or conducting water from a lake, river, or stream and:

(a) The device is not equipped with a fish guard, screen, or bypass approved by the director as required by RCW 75.20.040 (as recodified by this act) or 77.16.220; or

(b) The person knowingly fails to maintain or operate an approved fish guard, screen, or bypass so as to effectively screen or prevent fish from entering the intake.

(2) Unlawful failure to use or maintain an approved fish guard, screen, or bypass on a diversion device is a gross misdemeanor. Following written notification to the person from the department that there is a violation, each day that a diversion device is operated without an approved or maintained fish guard, screen, or bypass is a separate offense.

Sec. 241. RCW 77.15.320 and 1998 c 190 s 54 are each amended to read as follows:

(1) A person is guilty of unlawful failure to provide, maintain, or operate a fishway for dam or other obstruction if the person owns, operates, or controls a dam or other obstruction to fish passage on a river or stream and:

(a) The dam or obstruction is not provided with a durable and efficient fishway approved by the director as required by RCW 75.20.060 (as recodified by this act);

(b) Fails to maintain a fishway in efficient operating condition; or

(c) Fails to continuously supply a fishway with a sufficient supply of water to allow the free passage of fish.

(2) Unlawful failure to provide, maintain, or operate a fishway for dam or other obstruction is a gross misdemeanor. Following written notification to the

person from the department that there is a violation, each day of unlawful failure to provide, maintain, or operate a fishway is a separate offense.

Sec. 242. RCW 77.15.350 and 1998 c 190 s 58 are each amended to read as follows:

(1) A person is guilty of violating a rule regarding inspection and disease control of aquatic farms if the person:

- (a) Violates any rule adopted under chapter 75.58 RCW (as recodified by this act) regarding the inspection and disease control program for an aquatic farm; or
- (b) Fails to register or report production from an aquatic farm as required by chapter 75.58 RCW (as recodified by this act).

(2) A violation of a rule regarding inspection and disease control of aquatic farms is a misdemeanor.

Sec. 243. RCW 77.15.360 and 1998 c 190 s 61 are each amended to read as follows:

(1) A person is guilty of unlawful interfering in department operations if the person prevents department employees from carrying out duties authorized by this title (~~(or Title 75 RCW)~~), including but not limited to interfering in the operation of department vehicles, vessels, or aircraft.

(2) Unlawful interfering in department operations is a gross misdemeanor.

Sec. 244. RCW 77.15.380 and 1998 c 190 s 18 are each amended to read as follows:

(1) A person is guilty of unlawful recreational fishing in the second degree if the person fishes for, takes, possesses, or harvests fish or shellfish and:

(a) The person does not have and possess the license or the catch record card required by chapter 75.25 (as recodified by this act) or 77.32 RCW for such activity; or

(b) The action violates any rule of the commission or the director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas, closed times, or any other rule addressing the manner or method of fishing or possession of fish, except for use of a net to take fish as provided for in RCW 77.15.580.

(2) Unlawful recreational fishing in the second degree is a misdemeanor.

Sec. 245. RCW 77.15.390 and 1998 c 190 s 20 are each amended to read as follows:

(1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person does not have and possess the license required by chapter 75.25 RCW (as recodified by this act) for taking seaweed; or

(b) The action violates any rule of the department or the department of natural resources regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

Sec. 246. RCW 77.15.470 and 1998 c 190 s 29 are each amended to read as follows:

(1) A person is guilty of unlawfully avoiding wildlife check stations or field inspections if the person fails to:

(a) Obey check station signs;

(b) Stop and report at a check station if directed to do so by a uniformed fish and wildlife officer; or

(c) Produce for inspection upon request by a fish and wildlife officer: (i) Hunting or fishing equipment; (ii) seaweed, fish, shellfish, or wildlife; or (iii) licenses, permits, tags, stamps, or catch record cards required by this title (~~or Title 75 RCW~~).

(2) Unlawfully avoiding wildlife check stations or field inspections is a gross misdemeanor.

(3) Wildlife check stations may not be established upon interstate highways or state routes.

Sec. 247. RCW 77.15.480 and 1980 c 78 s 27 are each amended to read as follows:

Articles or devices unlawfully used, possessed, or maintained for catching, taking, killing, attracting, or decoying wildlife are public nuisances. If necessary, fish and wildlife ((agents)) officers and ex officio fish and wildlife ((agents)) officers may seize, abate, or destroy these public nuisances without warrant or process.

Sec. 248. RCW 77.15.500 and 1998 c 190 s 35 are each amended to read as follows:

(1) A person is guilty of commercial fishing without a license in the second degree if the person fishes for, takes, or delivers food fish, shellfish, or game fish while acting for commercial purposes and:

(a) The person does not hold a fishery license or delivery license under chapter 75.28 RCW (as recodified by this act) for the food fish or shellfish; or

(b) The person is not a licensed operator designated as an alternate operator on a fishery or delivery license under chapter 75.28 RCW (as recodified by this act) for the food fish or shellfish.

(2) A person is guilty of commercial fishing without a license in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The violation involves taking, delivery, or possession of food fish or shellfish with a value of two hundred fifty dollars or more; or

(b) The violation involves taking, delivery, or possession of food fish or shellfish from an area that was closed to the taking of such food fish or shellfish by any statute or rule.

(3)(a) Commercial fishing without a license in the second degree is a gross misdemeanor.

(b) Commercial fishing without a license in the first degree is a class C felony.

Sec. 249. RCW 77.15.530 and 1998 c 190 s 38 are each amended to read as follows:

(1) A person who holds a fishery license required by chapter 75.28 RCW (as recodified by this act), or who holds an operator's license and is designated as an alternate operator on a fishery license required by chapter 75.28 RCW (as recodified by this act), is guilty of unlawful use of a nondesignated vessel if the person takes, fishes for, or delivers from that fishery using a vessel not designated on the person's license, when vessel designation is required by chapter 75.28 RCW (as recodified by this act).

(2) Unlawful use of a nondesignated vessel is a gross misdemeanor.

(3) A nondesignated vessel may be used, subject to appropriate notification to the department and in accordance with rules established by the commission, when a designated vessel is inoperative because of accidental damage or mechanical breakdown.

(4) If the person commits the act described by subsection (1) of this section and the vessel designated on the person's fishery license was used by any person in the fishery on the same day, then the violation for using a nondesignated vessel is a class C felony. Upon conviction the department shall order revocation and suspension of all commercial fishing privileges under chapter 75.28 RCW (as recodified by this act) for a period of one year.

Sec. 250. RCW 77.15.540 and 1998 c 190 s 39 are each amended to read as follows:

(1) A person who holds a fishery license required by chapter 75.28 RCW (as recodified by this act), or who holds an operator's license and is designated as an alternate operator on a fishery license required by chapter 75.28 RCW (as recodified by this act), is guilty of unlawful use of a commercial fishery license if the person:

(a) Does not have the commercial fishery license or operator's license in possession during fishing or delivery; or

(b) Violates any rule of the department regarding the use, possession, display, or presentation of the person's license, decals, or vessel numbers.

(2) Unlawful use of a commercial fishery license is a misdemeanor.

Sec. 251. RCW 77.15.570 and 1998 c 190 s 49 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, it is unlawful for a person who is not a treaty Indian fisherman to participate in the taking of fish or shellfish in a treaty Indian fishery, or to be on board a vessel, or associated equipment, operating in a treaty Indian fishery. A violation of this subsection is a gross misdemeanor.

(2) A person who violates subsection (1) of this section with the intent of acting for commercial purposes, including any sale of catch, control of catch, profit from catch, or payment for fishing assistance, is guilty of a class C felony. Upon conviction, the department shall order revocation of any license and a one-year suspension of all commercial fishing privileges requiring a license under chapter 75.28 or 75.30 RCW (as recodified by this act).

(3)(a) The spouse, forebears, siblings, children, and grandchildren of a treaty Indian fisherman may assist the fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(b) Other treaty Indian fishermen with off-reservation treaty fishing rights in the same usual and accustomed places, whether or not the fishermen are members of the same tribe or another treaty tribe, may assist a treaty Indian fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(c) Biologists approved by the department may be on board a vessel operating in a treaty Indian fishery.

(4) For the purposes of this section:

(a) "Treaty Indian fisherman" means a person who may exercise treaty Indian fishing rights as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and post-trial orders of those courts;

(b) "Treaty Indian fishery" means a fishery open to only treaty Indian fishermen by tribal or federal regulation;

(c) "To participate" and its derivatives mean an effort to operate a vessel or fishing equipment, provide immediate supervision in the operation of a vessel or fishing equipment, or otherwise assist in the fishing operation, to claim possession of a share of the catch, or to represent that the catch was lawfully taken in an Indian fishery.

(5) A violation of this section constitutes illegal fishing and is subject to the suspensions provided for commercial fishing violations.

Sec. 252. RCW 77.15.580 and 1998 c 190 s 50 are each amended to read as follows:

(1) A person is guilty of unlawful use of a net to take fish in the second degree if the person:

(a) Lays, sets, uses, or controls a net or other device or equipment capable of taking fish from the waters of this state, except if the person has a valid license for such fishing gear from the director under this title and is acting in accordance with all rules of the commission and director; or

(b) Fails to return unauthorized fish to the water immediately while otherwise lawfully operating a net under a valid license.

(2) A person is guilty of unlawful use of a net to take fish in the first degree if the person:

(a) Commits the act described by subsection (1) of this section; and

(b) The violation occurs within five years of entry of a prior conviction for a gross misdemeanor or felony under this title (~~or Title 75 RCW~~) involving fish, other than a recreational fishing violation, or involving unlawful use of nets.

(3)(a) Unlawful use of a net to take fish in the second degree is a gross misdemeanor. Upon conviction, the department shall revoke any license held under this title (~~or Title 75 RCW~~) allowing commercial net fishing used in connection with the crime.

(b) Unlawful use of a net to take fish in the first degree is a class C felony. Upon conviction, the department shall order a one-year suspension of all commercial fishing privileges requiring a license under this title (~~or Title 75 RCW~~).

(4) Notwithstanding subsections (1) and (2) of this section, it is lawful to use a landing net to land fish otherwise legally hooked.

Sec. 253. RCW 77.15.620 and 1998 c 190 s 43 are each amended to read as follows:

(1) A person is guilty of engaging in fish dealing activity without a license in the second degree if the person:

(a) Engages in the commercial processing of fish or shellfish, including custom canning or processing of personal use fish or shellfish and does not hold a wholesale dealer's license required by RCW 75.28.300(1) or 77.32.211 (as recodified by this act) for anadromous game fish;

(b) Engages in the wholesale selling, buying, or brokering of food fish or shellfish and does not hold a wholesale dealer's or buying license required by RCW 75.28.300(2) or 77.32.211 (as recodified by this act) for anadromous game fish;

(c) Is a fisher who lands and sells his or her catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state and does not hold a wholesale dealer's license required by RCW 75.28.300(3) or 77.32.211 (as recodified by this act) for anadromous game fish; or

(d) Engages in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other byproducts from food fish or shellfish and does not hold a wholesale dealer's license required by RCW 75.28.300(4) or 77.32.211 (as recodified by this act) for anadromous game fish.

(2) Engaging in fish dealing activity without a license in the second degree is a gross misdemeanor.

(3) A person is guilty of engaging in fish dealing activity without a license in the first degree if the person commits the act described by subsection (1) of this section and the violation involves fish or shellfish worth two hundred fifty dollars or more. Engaging in fish dealing activity without a license in the first degree is a class C felony.

Sec. 254. RCW 77.15.630 and 1998 c 190 s 44 are each amended to read as follows:

(1) A person who holds a fish dealer's license required by RCW 75.28.300 (as recodified by this act), an anadromous game fish buyer's license required by RCW

77.32.211 (as recodified by this act), or a fish buyer's license required by RCW 75.28.340 (as recodified by this act) is guilty of unlawful use of fish buying and dealing licenses in the second degree if the person:

(a) Possesses or receives fish or shellfish for commercial purposes worth less than two hundred fifty dollars; and

(b) Fails to document such fish or shellfish with a fish-receiving ticket required by statute or rule of the department.

(2) A person is guilty of unlawful use of fish buying and dealing licenses in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The violation involves fish or shellfish worth two hundred fifty dollars or more;

(b) The person acted with knowledge that the fish or shellfish were taken from a closed area, at a closed time, or by a person not licensed to take such fish or shellfish for commercial purposes; or

(c) The person acted with knowledge that the fish or shellfish were taken in violation of any tribal law.

(3)(a) Unlawful use of fish buying and dealing licenses in the second degree is a gross misdemeanor.

(b) Unlawful use of fish buying and dealing licenses in the first degree is a class C felony. Upon conviction, the department shall suspend all privileges to engage in fish buying or dealing for two years.

Sec. 255. RCW 77.15.640 and 1998 c 190 s 45 are each amended to read as follows:

(1) A person who holds a wholesale fish dealer's license required by RCW 75.28.300 (as recodified by this act), an anadromous game fish buyer's license required by RCW 77.32.211 (as recodified by this act), or a fish buyer's license required by RCW 75.28.340 (as recodified by this act) is guilty of violating rules governing wholesale fish buying and dealing if the person:

(a) Fails to possess or display his or her license when engaged in any act requiring the license;

(b) Fails to display or uses the license in violation of any rule of the department;

(c) Files a signed fish-receiving ticket but fails to provide all information required by rule of the department; or

(d) Violates any other rule of the department regarding wholesale fish buying and dealing.

(2) Violating rules governing wholesale fish buying and dealing is a gross misdemeanor.

Sec. 256. RCW 77.15.650 and 1998 c 190 s 59 are each amended to read as follows:

(1) A person is guilty of unlawful purchase or use of a license in the second degree if the person buys, holds, uses, displays, transfers, or obtains any license, tag, permit, or approval required by this title (~~or Title 75 RCW~~) and the person:

(a) Uses false information to buy, hold, use, display, or obtain a license, permit, tag, or approval;

(b) Acquires, holds, or buys in excess of one license, permit, or tag for a license year if only one license, permit, or tag is allowed per license year;

(c) Uses or displays a license, permit, tag, or approval that was issued to another person;

(d) Permits or allows a license, permit, tag, or approval to be used or displayed by another person not named on the license, permit, tag, or approval;

(e) Acquires or holds a license while privileges for the license are revoked or suspended.

(2) A person is guilty of unlawful purchase or use of a license in the first degree if the person commits the act described by subsection (1) of this section and the person was acting with intent that the license, permit, tag, or approval be used for any commercial purpose. A person is presumed to be acting with such intent if the violation involved obtaining, holding, displaying, or using a license or permit for participation in any commercial fishery issued under this title (~~or Title 75 RCW~~) or a license authorizing fish or wildlife buying, trafficking, or wholesaling.

(3)(a) Unlawful purchase or use of a license in the second degree is a gross misdemeanor. Upon conviction, the department shall revoke any unlawfully used or held licenses and order a two-year suspension of participation in the activities for which the person unlawfully obtained, held, or used a license.

(b) Unlawful purchase or use of a license in the first degree is a class C felony. Upon conviction, the department shall revoke any unlawfully used or held licenses and order a five-year suspension of participation in any activities for which the person unlawfully obtained, held, or used a license.

(4) For purposes of this section, a person "uses" a license, permit, tag, or approval if the person engages in any activity authorized by the license, permit, tag, or approval held or possessed by the person. Such uses include but are not limited to fishing, hunting, taking, trapping, delivery or landing fish or wildlife, and selling, buying, or wholesaling of fish or wildlife.

(5) Any license obtained in violation of this section is void upon issuance and is of no legal effect.

Sec. 257. RCW 77.15.710 and 1998 c 190 s 67 are each amended to read as follows:

(1) The commission shall revoke all hunting, fishing, or other licenses issued under this title and order a ten-year suspension of all privileges extended under the authority of the department of a person convicted of assault on a fish and wildlife officer (~~or other law enforcement officer provided that:~~

~~—(a) The fish and wildlife officer or other law enforcement officer was on duty at the time of the assault; and~~

~~— (b) The fish and wildlife officer or other law enforcement officer was enforcing the provisions of this title)), ex officio officer, employee, agent, or personnel acting for the department, if the employee assaulted was on duty at the time of the assault and carrying out the provisions of this title. The suspension shall be continued beyond this period if any damages to the victim have not been paid by the suspended person.~~

(2) For the purposes of this section, the definition of assault includes:

- (a) RCW 9A.32.030; murder in the first degree;
- (b) RCW 9A.32.050; murder in the second degree;
- (c) RCW 9A.32.060; manslaughter in the first degree;
- (d) RCW 9A.32.070; manslaughter in the second degree;
- (e) RCW 9A.36.011; assault in the first degree;
- (f) RCW 9A.36.021; assault in the second degree; and
- (g) RCW 9A.36.031; assault in the third degree.

Sec. 258. RCW 77.15.720 and 1998 c 190 s 68 are each amended to read as follows:

(1) If a person shoots another person or domestic livestock while hunting, the director shall revoke all hunting licenses and suspend all hunting privileges for three years. If the shooting of another person or livestock is the result of criminal negligence or reckless or intentional conduct, then the person's privileges shall be suspended for ten years. The suspension ~~((may))~~ shall be continued beyond these periods if damages owed to the victim or livestock owner have not been paid by the suspended person. A hunting license shall not be reissued to the suspended person unless authorized by the director.

~~(2) ((If a person commits any assault upon employees, agents, or personnel acting for the department, the director shall suspend hunting or fishing privileges for ten years.~~

~~—(3))~~ Within twenty days of service of an order suspending privileges or imposing conditions under this section or RCW 77.15.710, a person may petition for administrative review under chapter 34.05 RCW by serving the director with a petition for review. The order is final and unappealable if there is no timely petition for administrative review.

~~(((4)))~~ (3) The commission may by rule authorize petitions for reinstatement of administrative suspensions and define circumstances under which reinstatement will be allowed.

Sec. 259. RCW 77.16.020 and 1998 c 190 s 119 are each amended to read as follows:

For the purposes of establishing a season or bag limit restriction on Canada goose hunting, the ~~((department))~~ commission shall not consider leg length or bill length of dusky Canada geese (*Branta canadensis occidentalis*).

Sec. 260. RCW 77.16.360 and 1997 c 1 s 1 are each amended to read as follows:

(1) Notwithstanding the provisions of RCW 77.12.240 (~~and 77.12.265~~) or other provisions of law, it is unlawful to take, hunt, or attract black bear with the aid of bait.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear with the aid of bait by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety.

(b) Nothing in this subsection shall be construed to prevent the establishment and operation of feeding stations for black bear in order to prevent damage to commercial timberland.

(c) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of bait to attract black bear for scientific purposes.

(d) As used in this subsection, "bait" means a substance placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting black bears to an area where one or more persons hunt or intend to hunt them.

(2) Notwithstanding RCW 77.12.240 or any other provisions of law, it is unlawful to hunt or pursue black bear, cougar, bobcat, or lynx with the aid of a dog or dogs.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear, cougar, bobcat, or lynx with the aid of a dog or dogs by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety. A dog or dogs may be used by the owner or tenant of real property consistent with a permit issued and conditioned by the director (~~under RCW 77.12.265~~).

(b) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of a dog or dogs for the pursuit of black bear, cougar, bobcat, or lynx for scientific purposes.

(3) A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor. In addition to appropriate criminal penalties, the director shall revoke the hunting license of a person who violates subsection (1) or (2) of this section and a hunting license shall not be issued for a period of five years following the revocation. Following a subsequent violation of subsection (1) or (2) of this section by the same person, a hunting license shall not be issued to the person at any time.

Sec. 261. RCW 77.17.020 and 1994 c 264 s 56 are each amended to read as follows:

For purposes of Article VII of RCW 77.17.010 (as recodified by this act), the term "licensing authority," with reference to this state, means the department. The director is authorized to appoint a compact administrator.

Sec. 262. RCW 77.18.010 and 1993 sp.s. c 2 s 76 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 fish and wildlife.~~
~~(2))~~ (2) "Contract" means an agreement setting at a minimum, price, quantity of fish to be delivered, time of delivery, and fish health requirements.

~~((3))~~ (2) "Fish health requirements" means those site specific fish health and genetic requirements actually used by the department of fish and wildlife in fish stocking.

~~((4))~~ (3) "Aquatic farmer" means a private sector person who commercially farms and manages private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

~~((5) "Person" means a natural person, corporation, trust, or other legal entity.)~~

(4) "Warm water game fish" includes the following species: Bass, channel catfish, walleye, crappie, and other species as defined by the department.

Sec. 263. RCW 77.21.090 and 1993 c 82 s 5 are each amended to read as follows:

(1) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.17.010 (as recodified by this act), the department shall suspend the violator's license privileges under this title until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the department. The department shall adopt by rule procedures for the timely notification and administrative review of such suspension of licensing privileges.

(2) Upon receipt of a report of a conviction from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.17.010 (as recodified by this act), the department shall enter such conviction in its records and shall treat such conviction as if it occurred in the state of Washington for the purposes of suspension, revocation, or forfeiture of license privileges.

Sec. 264. RCW 77.32.010 and 1998 c 191 s 7 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, a license issued by the director is required to:

- (a) Hunt for wild animals, except bullfrogs, or wild birds, fish or harvest shellfish and seaweed, except sinelt, albacore, carp, and crawfish;
- (b) Practice taxidermy for profit;
- (c) Deal in raw furs for profit;
- (d) Act as a fishing guide;
- (e) Operate a game farm;
- (f) Purchase or sell anadromous game fish; or

(g) Use department-managed lands or facilities as provided by rules adopted pursuant to this title.

(2) A permit issued by the director is required to:

(a) Conduct, hold, or sponsor bunting or game fish fishing contests or competitive field trials using live wildlife;

(b) Collect wild animals, wild birds, game fish, food fish, shellfish, or protected wildlife for research or display; or

(c) Stock game fish.

(3) Aquaculture as defined in RCW 15.85.020 is exempt from the requirements of this section, except when being stocked in public waters under contract with the department.

Sec. 265. RCW 77.32.014 and 1998 c 191 s 8 are each amended to read as follows:

(1) Licenses, tags, and stamps issued pursuant to this chapter shall be invalid for any period in which a person is certified by the department of social and health services or a court of competent jurisdiction as a person in noncompliance with a support order. Fish and wildlife officers and ex officio fish and wildlife officers shall enforce this section through checks of the department of licensing's computer data base. A listing on the department of licensing's data base that an individual's license is currently suspended pursuant to RCW 46.20.291(~~(7)~~) (8) shall be prima facie evidence that the individual is in noncompliance with a support order. Presentation of a written release issued by the department of social and health services stating that the person is in compliance with an order shall serve as prima facie proof of compliance with a support order.

(2) It is unlawful to purchase, obtain, or possess a license required by this chapter during any period in which a license is suspended.

Sec. 266. RCW 77.32.050 and 1999 c 243 s 2 are each amended to read as follows:

All recreational licenses, permits, tags, and stamps required by (~~Titles 75 and 77 RCW~~) this title and raffle tickets authorized under chapter 77.12 RCW shall be issued under the authority of the commission. The commission shall adopt rules for the issuance of recreational licenses, permits, tags, stamps, and raffle tickets, and for the collection, payment, and handling of license fees, terms and conditions to govern dealers, and dealers' fees. A transaction fee on recreational licenses may be set by the commission and collected from licensees. The department may authorize all or part of such fee to be paid directly to a contractor providing automated licensing system services. Fees retained by dealers shall be uniform throughout the state. The department shall authorize dealers to collect and retain dealer fees of at least two dollars for purchase of a standard hunting or fishing recreational license document, except that the commission may set a lower dealer fee for issuance of tags or when a licensee buys a license that involves a stamp or display card format rather than a standard department licensing document form.

Sec. 267. RCW 77.32.090 and 1998 c 191 s 12 are each amended to read as follows:

The commission may adopt rules pertaining to the form, period of validity, use, possession, and display of licenses, permits, tags, ~~((and)) stamps, and raffle tickets~~ required by this chapter ~~((and raffle tickets authorized under chapter 77.12 RCW)).~~

Sec. 268. RCW 77.32.199 and 1987 c 372 s 4 are each amended to read as follows:

The ~~((commission))~~ director may revoke the trapper's license of a person placing unauthorized traps on private property and may remove those traps.

Sec. 269. RCW 77.32.250 and 1998 c 191 s 22 are each amended to read as follows:

Licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under this chapter ~~((77.12 RCW))~~ shall not be transferred.

Upon request of a fish and wildlife officer or ex officio fish and wildlife officer, persons licensed, operating under a permit, or possessing wildlife under the authority of this chapter shall produce required licenses, permits, tags, stamps, ~~((or))~~ raffle tickets, or catch record cards 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. 270. RCW 77.32.350 and 1998 c 191 s 25 are each amended to read as follows:

In addition to a small game hunting license, a supplemental permit or stamp is required to hunt for western Washington pheasant or migratory birds.

(1) A western Washington pheasant permit is required to hunt for pheasant in western Washington. Western Washington pheasant permits must contain numbered spaces for recording the location and date of harvest of each western Washington pheasant. ~~((It is unlawful to harvest a western Washington pheasant without immediately recording this information on the permit.))~~

(2) The permit shall be available as a season option, a youth full season option, or a three-day option. The fee for this permit is:

- (a) For the resident and nonresident full season option, thirty-six dollars;
- (b) For the youth full season option, eighteen dollars;
- (c) For the three-day option, twenty dollars.

(3) A migratory bird stamp affixed to a hunting license designated by rule of the commission is required for all persons sixteen years of age or older to hunt migratory birds. The fee for the stamp for hunters is six dollars for residents and nonresidents. The fee for the stamp for collectors is six dollars.

(4) The migratory bird stamp shall be validated by the signature of the licensee written across the face of the stamp.

Sec. 271. RCW 77.32.380 and 1998 c 87 s 1 are each amended to read as follows:

(1) Persons who enter upon or use clearly identified department improved access facilities with a motor vehicle may be required to display a current annual fish and wildlife lands vehicle use permit on the motor vehicle while within or while using an improved access facility. An "improved access facility" is a clearly identified area specifically created for motor vehicle parking, and includes any boat launch or boat ramp associated with the parking area, but does not include the department parking facilities at the Gorge Concert Center near George, Washington. The vehicle use permit is issued in the form of a decal. One decal shall be issued at no charge with each annual saltwater, freshwater, combination, small game hunting, big game hunting, and trapping license issued by the department. The annual fee for a fish and wildlife lands vehicle use permit, if purchased separately, is ten dollars. A person to whom the department has issued a decal or who has purchased a vehicle use permit separately may purchase a decal from the department for each additional vehicle owned by the person at a cost of five dollars per decal upon a showing of proof to the department that the person owns the additional vehicle or vehicles. Revenue derived from the sale of fish and wildlife lands vehicle use permits shall be used solely for the stewardship and maintenance of department improved access facilities. ~~((Revenue derived from the sale of fish and wildlife lands vehicle use permits shall be used solely for the stewardship and maintenance of department improved access facilities.))~~

Youth groups may use department improved access facilities without possessing a vehicle use permit when accompanied by a vehicle use permit holder.

The department may accept contributions into the state wildlife fund for the sound stewardship of fish and wildlife. Contributors shall be known as "conservation patrons" and, for contributions of twenty dollars or more, shall receive a fish and wildlife lands vehicle use permit free of charge.

(2) The decal must be affixed in a permanent manner to the motor vehicle before entering upon or using the motor vehicle on a department improved access facility, and must be displayed on the rear window of the motor vehicle, or, if the motor vehicle does not have a rear window, on the rear of the motor vehicle.

(3) Failure to display the fish and wildlife lands vehicle use permit if required by this section is an infraction under chapter 7.84 RCW, and department employees are authorized to issue a notice of infraction to the registered owner of any motor vehicle entering upon or using a department improved access facility without such a decal. The penalty for failure to display or improper display of the decal is sixty-six dollars.

Sec. 272. RCW 77.32.420 and 1998 c 191 s 4 are each amended to read as follows:

~~((+))~~ Recreational licenses are not transferable. Upon request of a fish and wildlife officer, ex officio fish and wildlife officer, or authorized fish and wildlife employee, a person digging for, fishing for, or possessing shellfish, or seaweed or

fishing for or possessing food fish or game fish for personal use shall exhibit the required recreational license and write his or her signature for comparison with the signature on the license. Failure to comply with the request is prima facie evidence that the person does not have a license or is not the person named on the license.

~~((2) The personal use shellfish and seaweed license shall be visible on the licensee while harvesting shellfish or seaweed.))~~

Repealed Sections

NEW SECTION. **Sec. 273.** The following acts or parts of acts are each repealed:

- (1) RCW 77.08.070 ("Raffle" defined) and 1996 c 101 s 4;
- (2) RCW 77.12.101 (Seizure of contraband wildlife and devices—Forfeiture) and 1989 c 314 s 2;
- (3) RCW 77.12.200 (Acquisition of property) and 1987 c 506 s 28, 1980 c 78 s 35, 1965 ex.s. c 97 s 1, & 1955 c 36 s 77.12.200;
- (4) RCW 77.16.210 (Fishways to be provided and maintained) and 1980 c 78 s 88 & 1955 c 36 s 77.16.210;
- (5) RCW 77.16.290 (Law enforcement officers, exemption) and 1994 sp.s. c 7 s 444, 1980 c 78 s 95, & 1955 c 36 s 77.16.290;
- (6) RCW 77.16.340 (Obstructing the taking of fish or wildlife—Penalty—Defenses) and 1988 c 265 s 1;
- (7) RCW 77.16.350 (Obstructing the taking of fish or wildlife—Civil action) and 1988 c 265 s 2;
- (8) RCW 77.21.020 (Revocation of hunting license for big game violation—Subsequent issuance—Appeal) and 1998 c 191 s 35, 1987 c 506 s 70, 1980 c 78 s 124, & 1975 1st ex.s. c 6 s 1;
- (9) RCW 77.21.030 (Revocation for shooting person or livestock—Subsequent issuance) and 1998 c 191 s 36, 1987 c 506 s 71, 1980 c 78 s 123, & 1955 c 36 s 77.32.280;
- (10) RCW 77.21.070 (Illegal killing or possession of wildlife—Restitution to state—Amounts—Bail—License revoked) and 1997 c 226 s 2, 1989 c 11 s 28, 1987 c 506 s 74, 1986 c 318 s 1, 1984 c 258 s 336, & 1983 1st ex.s. c 8 s 3;
- (11) RCW 77.32.005 (Definitions) and 1998 c 191 s 6, 1989 c 305 s 17, 1980 c 78 s 102, 1961 c 94 s 1, & 1957 c 176 s 14;
- (12) RCW 77.32.060 (Licenses, permits, tags, stamps, and raffle tickets—Amount of fees to be retained by license dealers) and 1998 c 245 s 160, 1996 c 101 s 9, 1995 c 116 s 2, 1987 c 506 s 78, 1985 c 464 s 1, 1981 c 310 s 17, 1980 c 78 s 107, 1979 ex.s. c 3 s 3, 1970 ex.s. c 29 s 2, 1957 c 176 s 2, & 1955 c 36 s 77.32.060; and
- (13) RCW 77.44.020 (Species included in term "warm water game fish") and 1996 c 222 s 2.

Recodified Sections

NEW SECTION. Sec. 274. RCW 77.04.100, 77.16.020, 77.16.095, and 77.21.080 are each recodified as sections in chapter 77.12 RCW.

NEW SECTION. Sec. 275. RCW 77.12.080, 77.12.090, 77.12.095, 77.12.103, 77.16.070, 77.16.360, and 77.21.090 are each recodified as sections in chapter 77.15 RCW.

NEW SECTION. Sec. 276. RCW 77.12.530, 77.12.770, 77.12.780, 77.16.010, and 77.16.170 are each recodified as sections in chapter 77.32 RCW.

NEW SECTION. Sec. 277. RCW 77.18.005, 77.18.010, 77.18.020, and 77.18.030 are each recodified as sections in chapter 77.44 RCW.

Passed the House March 6, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 108

[Substitute House Bill 2466]

BALLAST WATER MANAGEMENT

AN ACT Relating to ballast water management; adding a new chapter to Title 75 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 some nonindigenous species have the potential to cause economic and environmental damage to the state and that current efforts to stop the introduction of nonindigenous species from shipping vessels do not adequately reduce the risk of new introductions into Washington waters.

The legislature recognizes the international ramifications and the rapidly changing dimensions of this issue, and the difficulty that any one state has in either legally or practically managing this issue. Recognizing the possible limits of state jurisdiction over international issues, the state declares its support for the international maritime organization and United States coast guard efforts, and the state intends to complement, to the extent its powers allow it, the United States coast guard's ballast water management program.

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

(1) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(2) "Ballast water" means any water and matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(3) "Empty/refill exchange" means to pump out, until the tank is empty or as close to empty as the master or operator determines is safe, the ballast water taken on in ports, estuarine, or territorial waters, and then refilling the tank with open sea waters.

(4) "Exchange" means to replace the water in a ballast tank using either flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the United States coast guard.

(5) "Flow through exchange" means to flush out ballast water by pumping in midocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(6) "Nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its natural range.

(7) "Open sea exchange" means an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this chapter.

(8) "Recognized marine trade association" means those trade associations in Washington state that promote improved ballast water management practices by educating their members on the provisions of this chapter, participating in regional ballast water coordination through the Pacific ballast water group, assisting the department in the collection of ballast water exchange forms, and the monitoring of ballast water. This includes members of the Puget Sound marine committee for Puget Sound and the Columbia river steamship operators association for the Columbia river.

(9) "Sediments" means any matter settled out of ballast water within a vessel.

(10) "Untreated ballast water" includes exchanged or unexchanged ballast water that has not undergone treatment.

(11) "Vessel" means a self-propelled ship in commerce of three hundred gross tons or more.

(12) "Voyage" means any transit by a vessel destined for any Washington port.

(13) "Waters of the state" means any surface waters, including internal waters contiguous to state shorelines within the boundaries of the state.

NEW SECTION. Sec. 3. (1) This chapter applies to all vessels carrying ballast water into the waters of the state from a voyage, except:

(a) A vessel of the United States department of defense or United States coast guard subject to the requirements of section 1103 of the national invasive species act of 1996, or any vessel of the armed forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to the uniform national discharge standards for vessels of the armed forces under 33 U.S.C. Sec. 1322(n);

(b) A vessel (i) that discharges ballast water or sediments only at the location where the ballast water or sediments originated, if the ballast water or sediments

do not mix with ballast water or sediments from areas other than open sea waters; or (ii) that does not discharge ballast water in Washington waters;

(c) A vessel traversing the internal waters of Washington in the Strait of Juan de Fuca, bound for a port in Canada, and not entering or departing a United States port, or a vessel in innocent passage, which is a vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States; and

(d) A crude oil tanker that does not exchange or discharge ballast water into the waters of the state.

(2) This chapter does not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal, or international laws or regulations. Ballast water containing oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

(3) The master or operator in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers. Nothing in this chapter relieves the master or operator in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers.

NEW SECTION. Sec. 4. The owner or operator in charge of any vessel covered by this chapter is required to ensure that the vessel under their ownership or control does not discharge ballast water into the waters of the state except as authorized by this section.

(1) Discharge into waters of the state is authorized if the vessel has conducted an open sea exchange of ballast water. A vessel is exempt from this requirement if the vessel's master reasonably determines that such a ballast water exchange operation will threaten the safety of the vessel or the vessel's crew, or is not feasible due to vessel design limitations or equipment failure. If a vessel relies on this exemption, then it may discharge ballast water into waters of the state, subject to any requirements of treatment under subsection (2) of this section and subject to section 5 of this act.

(2) After July 1, 2002, discharge of ballast water into waters of the state is authorized only if there has been an open sea exchange or if the vessel has treated its ballast water to meet standards set by the department. When weather or extraordinary circumstances make access to treatment unsafe to the vessel or crew, the master of a vessel may delay compliance with any treatment required under this subsection until it is safe to complete the treatment.

(3) The requirements of this section do not apply to a vessel discharging ballast water or sediments that originated solely within the waters of Washington state, the Columbia river system, or the internal waters of British Columbia south of latitude fifty degrees north, including the waters of the Straits of Georgia and Juan de Fuca.

(4) Open sea exchange is an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange

further offshore, then that distance is the required distance for purposes of compliance with this chapter.

NEW SECTION. Sec. 5. The owner or operator in charge of any vessel covered by this chapter is required to ensure that the vessel under their ownership or control complies with the reporting and sampling requirements of this section.

(1) Vessels covered by this chapter must report ballast water management information to the department using ballast water management forms that are acceptable to the United States coast guard. The frequency, manner, and form of such reporting shall be established by the department by rule. Any vessel may rely on a recognized marine trade association to collect and forward this information to the department.

(2) In order to monitor the effectiveness of national and international efforts to prevent the introduction of nonindigenous species, all vessels covered by this chapter must submit nonindigenous species ballast water monitoring data. The monitoring, sampling, testing protocols, and methods of identifying nonindigenous species in ballast water shall be determined by the department by rule. A vessel covered by this chapter may contract with a recognized marine trade association to randomly sample vessels within that association's membership, and provide data to the department.

(3) Vessels that do not belong to a recognized marine trade association must submit individual ballast tank sample data to the department for each voyage.

(4) All data submitted to the department under subsection (2) of this section shall be consistent with sampling and testing protocols as adopted by the department by rule.

(5) The department shall adopt rules to implement this section. The rules and recommendations shall be developed in consultation with advisors from regulated industries and the potentially affected parties, including but not limited to shipping interests, ports, shellfish growers, fisheries, environmental interests, interested citizens who have knowledge of the issues, and appropriate governmental representatives including the United States coast guard.

(a) The department shall set standards for the discharge of treated ballast water into the waters of the state. The rules are intended to ensure that the discharge of treated ballast water poses minimal risk of introducing nonindigenous species. In developing this standard, the department shall consider the extent to which the requirement is technologically and practically feasible. Where practical and appropriate, the standards shall be compatible with standards set by the United States coast guard and shall be developed in consultation with federal and state agencies to ensure consistency with the federal clean water act, 33 U.S.C. Sec. 1251-1387.

(b) The department shall adopt ballast water sampling and testing protocols for monitoring the biological components of ballast water that may be discharged into the waters of the state under this chapter. Monitoring data is intended to assist the department in evaluating the risk of new, nonindigenous species introductions

from the discharge of ballast water, and to evaluate the accuracy of ballast water exchange practices. The sampling and testing protocols must consist of cost-effective, scientifically verifiable methods that, to the extent practical and without compromising the purposes of this chapter, utilize easily measured indices, such as salinity, or check for species that indicate the potential presence of nonindigenous species or pathogenic species. The department shall specify appropriate quality assurance and quality control for the sampling and testing protocols.

NEW SECTION. Sec. 6. The shipping vessel industry, the public ports, and the department shall promote the creation of a pilot project to establish a private sector ballast water treatment operation that is capable of servicing vessels at all Washington ports. Federal and state agencies and private industries shall be invited to participate. The project will develop equipment or methods to treat ballast water and establish operational methods that do not increase the cost of ballast water treatment at smaller ports. The legislature intends that the cost of treatment required by this chapter is substantially equivalent among large and small ports in Washington.

NEW SECTION. Sec. 7. The legislature recognizes that international and national laws relating to this chapter are changing and that state law must adapt accordingly. The department shall submit to the legislature, and make available to the public, a report that summarizes the results of this chapter and makes recommendations for improvement to this chapter on or before December 1, 2001, and a second report on or before December 1, 2004. The 2001 report shall describe how the costs of treatment required as of July 1, 2002, will be substantially equivalent among ports where treatment is required. The department shall strive to fund the provisions of this chapter through existing resources, cooperative agreements with the maritime industry, and federal funding sources.

NEW SECTION. Sec. 8. (1) Except as limited by subsection (2) or (3) of this section, the director or the director's designee may impose a civil penalty or warning for a violation of the requirements of this chapter on the owner or operator in charge of a vessel who fails to comply with the requirements imposed under sections 4 and 5 of this act. The penalty shall not exceed five thousand dollars for each violation. In determining the amount of a civil penalty, the department shall consider if the violation was intentional, negligent, or without any fault, and shall consider the quality and nature of risks created by the violation. The owner or operator subject to such a penalty may contest the determination by requesting an adjudicative proceeding within twenty days. Any determination not timely contested is final and may be reduced to a judgment enforceable in any court with jurisdiction. If the department prevails using any judicial process to collect a penalty under this section, the department shall also be awarded its costs and reasonable attorneys' fees.

(2) The civil penalty for a violation of reporting requirements of section 5 of this act shall not exceed five hundred dollars per violation.

(3) Any owner or operator who knowingly, and with intent to deceive, falsifies a ballast water management report form is liable for a civil penalty in an amount not to exceed five thousand dollars per violation, in addition to any criminal liability that may attach to the filing of false documents.

(4) The department, in cooperation with the United States coast guard, may enforce the requirements of this chapter.

NEW SECTION. Sec. 9. By December 31, 2005, the natural resources committees of the legislature must review this chapter and its implementation and make recommendations if needed to the 2006 regular session of the legislature.

NEW SECTION. Sec. 10. The departments of fish and wildlife and ecology shall invite representatives from the United States department of defense to discuss ways of improving ballast water management in Washington state. The departments, in cooperation with the United States coast guard shall seek input from other coastal states and the Providence of British Columbia in conducting the study and in formulating recommendations. The departments shall provide the most appropriate forum to stimulate dialogue which can result in specific policies and action protocols. The departments shall make recommendations concerning proposals for laws and rules that will guarantee the same level of public and private compliance to protect the marine environment. The legislature wishes to ensure that vessels exempted from this act by section 3(1)(a) of this act are taking adequate precautions to prevent the introduction of nonindigenous species into the waters of the state. The departments of fish and wildlife and ecology shall submit a report to the legislature by December 31, 2001, summarizing the results of these discussions.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. Sections 1 through 9 and 11 of this act constitute a new chapter in Title 75 RCW.

Passed the House March 6, 2000.

Passed the Senate February 28, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 109

[House Bill 2495]

HUNTING LICENSES—UNCLASSIFIED WILDLIFE

AN ACT Relating to hunting licenses; and amending RCW 77.32.450 and 77.32.460.

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

Sec. 1. RCW 77.32.450 and 1998 c 191 s 14 are each amended to read as follows:

(1) A big game hunting license is required to hunt for big game. A big game license allows the holder to hunt for forest grouse, unclassified wildlife, and the individual species identified within a specific big game combination license package. Each big game license includes one transport tag for each species purchased in that package. A hunter may not purchase more than one license for each big game species except as authorized by rule of the commission. The fees for annual big game combination packages are as follows:

(a) Big game number 1: Deer, elk, bear, and cougar. The fee for this license is sixty-six dollars for residents, six hundred sixty dollars for nonresidents, and thirty-three dollars for youth.

(b) Big game number 2: Deer and elk. The fee for this license is fifty-six dollars for residents, five hundred sixty dollars for nonresidents, and twenty-eight dollars for youth.

(c) Big game number 3: Deer or elk, bear, and cougar. At the time of purchase, the holder must identify either deer or elk. The fee for this license is forty-six dollars for residents, four hundred sixty dollars for nonresidents, and twenty-three dollars for youth.

(d) Big game number 4: Deer or elk. At the time of purchase, the holder must identify either deer or elk. The fee for this license is thirty-six dollars for residents, three hundred sixty dollars for nonresidents, and eighteen dollars for youth.

(e) Big game number 5: Bear and cougar. The fee for this license is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(2) In the event that the commission authorizes a two animal big game limit, the fees for the second animal are as follows:

(a) Elk: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(b) Deer: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(c) Bear: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(d) Cougar: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(3) In the event that the commission authorizes a special permit hunt for goat, sheep, or moose, the permit fees are as follows:

(a) Mountain goat: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(b) Sheep: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(c) Moose: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

Authorization to hunt the species set out under subsection (3)(a) through (c) of this section is by special permit identified under RCW 77.32.370.

(4) The commission may adopt rules to reduce the price of a license or eliminate the transportation tag requirements concerning bear or cougar when necessary to meet harvest objectives.

Sec. 2. RCW 77.32.460 and 1998 c 191 s 15 are each amended to read as follows:

(1) A small game hunting license is required to hunt for all classified wild animals and wild birds, except big game. A small game license also allows the holder to hunt for unclassified wildlife. The small game license includes one transport tag for turkey.

(a) The fee for this license is thirty dollars for residents, one hundred fifty dollars for nonresidents, and fifteen dollars for youth.

(b) The fee for this license if purchased in conjunction with a big game combination license package is sixteen dollars for residents, eighty dollars for nonresidents, and eight dollars for youth.

(c) The fee for a three-consecutive-day small game license is fifty dollars for nonresidents.

(2) The fee for each additional turkey tag is eighteen dollars for residents, thirty dollars for nonresidents, and nine dollars for youth.

Passed the House February 9, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 110

[Substitute House Bill 2776]

TRAFFIC INFRACTIONS—DEFERRED FINDINGS

AN ACT Relating to deferred findings and collection of an administrative fee in an infraction case; and amending RCW 46.63.070.

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

Sec. 1. RCW 46.63.070 and 1993 c 501 s 10 are each amended to read as follows:

(1) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department in accordance with RCW 46.20.270.

(3) If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5)(a) In hearings conducted pursuant to subsections (3) and (4) of this section, the court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of its order, for up to one year and impose conditions upon the defendant the court deems appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate for administrative processing. If at the end of the deferral period the defendant has met all conditions and has not been determined to have committed another traffic infraction, the court may dismiss the infraction.

(b) A person may not receive more than one deferral within a seven-year period for traffic infractions for moving violations and more than one deferral within a seven-year period for traffic infractions for nonmoving violations.

(6) If any person issued a notice of traffic infraction:

(a) Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this chapter and shall notify the department in accordance with RCW 46.20.270, of the failure to respond to the notice of infraction or to appear at a requested hearing.

Passed the House March 6, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 111

[Substitute House Bill 2799]

COURTS OF LIMITED JURISDICTION—WARRANTS

AN ACT Relating to granting state-wide warrant jurisdiction to courts of limited jurisdiction; amending RCW 3.66.010, 3.66.060, 3.66.070, 3.46.030, 3.50.020, and 35.20.030; and creating new sections.

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

NEW SECTION. Sec. 1. The administrator for the courts shall establish a pilot program for the efficient state-wide processing of warrants issued by courts of limited jurisdiction. The pilot program shall contain procedures and criteria for courts of limited jurisdiction to enter into agreements with other courts of limited jurisdiction throughout the state to process each other's warrants when the defendant is within the processing court's jurisdiction. The administrator for the courts shall establish a formula for allocating between the court processing the warrant and the court that issued the warrant any moneys collected and costs associated with the processing of warrants.

Sec. 2. RCW 3.66.010 and 1984 c 258 s 40 are each amended to read as follows:

(1) The justices of the peace elected in accordance with chapters 3.30 through 3.74 RCW are authorized to hold court as judges of the district court for the trial of all actions enumerated in chapters 3.30 through 3.74 RCW or assigned to the district court by law; to hear, try, and determine the same according to the law, and for that purpose where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature shall apply to such district court as far as the same may be applicable and not inconsistent with the provisions of chapters 3.30 through 3.74 RCW. The district court shall, upon the demand of either party, impanel a jury to try any civil or criminal case in accordance with the provisions of chapter 12.12 RCW. No jury trial may be held in a proceeding involving a traffic infraction.

(2) A district court participating in the program established by the office of the administrator for the courts pursuant to section 1 of this act shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any other court of limited jurisdiction participating in the program.

Sec. 3. RCW 3.66.060 and 1984 c 258 s 44 are each amended to read as follows:

The district court shall have jurisdiction: (1) Concurrent with the superior court of all misdemeanors and gross misdemeanors committed in their respective counties and of all violations of city ordinances. It shall in no event impose a greater punishment than a fine of five thousand dollars, or imprisonment for one year in the county or city jail as the case may be, or both such fine and imprisonment, unless otherwise expressly provided by statute. It may suspend and revoke vehicle operators' licenses in the cases provided by law; (2) to sit as a committing magistrate and conduct preliminary hearings in cases provided by law; (3) concurrent with the superior court of a proceeding to keep the peace in their respective counties; (4) concurrent with the superior court of all violations under Title 75 RCW; ~~(and)~~ (5) to hear and determine traffic infractions under chapter 46.63 RCW; and (6) to take recognizance, approve bail, and arraign defendants

held within its jurisdiction on warrants issued by other courts of limited jurisdiction when those courts are participating in the program established under section 1 of this act.

Sec. 4. RCW 3.66.070 and 1991 c 290 s 2 are each amended to read as follows:

All criminal actions shall be brought in the district where the alleged violation occurred: PROVIDED, That (1) the prosecuting attorney may file felony cases in the district in which the county seat is located, (2) with the consent of the defendant criminal actions other than those arising out of violations of city ordinances may be brought in or transferred to the district in which the county seat is located, ~~((and))~~ (3) if the alleged violation relates to driving, or being in actual physical control of, a motor vehicle while under the influence of intoxicating liquor or any drug and the alleged violation occurred within a judicial district which has been designated an enhanced enforcement district under RCW 2.56.110, the charges may be filed in that district or in a district within the same county which is adjacent to the district in which the alleged violation occurred, and (4) a district court participating in the program established by the office of the administrator for the courts pursuant to section 1 of this act shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any other court of limited jurisdiction participating in the program.

Sec. 5. RCW 3.46.030 and 1985 c 303 s 13 are each amended to read as follows:

A municipal department shall have exclusive jurisdiction of matters arising from ordinances of the city, and no jurisdiction of other matters except as conferred by statute. A municipal department participating in the program established by the office of the administrator for the courts pursuant to section 1 of this act shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

Sec. 6. RCW 3.50.020 and 1985 c 303 s 14 are each amended to read as follows:

The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city in which the municipal court is located and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the office of the administrator for the courts pursuant to section 1 of this act shall have jurisdiction

to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

Sec. 7. RCW 35.20.030 and 1993 c 83 s 3 are each amended to read as follows:

The municipal court shall have jurisdiction to try violations of all city ordinances and all other actions brought to enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith: PROVIDED, That for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than a fine of five thousand dollars or imprisonment in the city jail not to exceed one year, or both such fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. All civil and criminal proceedings in municipal court, and judgments rendered therein, shall be subject to review in the superior court by writ of review or on appeal: PROVIDED, That an appeal from the court's determination or order in a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). Costs in civil and criminal cases may be taxed as provided in district courts. A municipal court participating in the program established by the office of the administrator for the courts pursuant to section 1 of this act shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

NEW SECTION. Sec. 8. The program established by the office of the administrator for the courts pursuant to section 1 of this act shall by June 1, 2003, report to the legislature on the effectiveness and costs of the pilot program. Copies of the report shall be distributed to the house of representatives judiciary committee and the senate judiciary committee.

Passed the House March 6, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 112

[Substitute House Bill 2418]

WORLD WAR II ORAL HISTORY PROJECT

AN ACT Relating to a World War II oral history project; adding a new section to chapter 28A.300 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 more than two hundred fifty thousand of Washington's citizens served their country in the armed forces of the United States during World War II. The legislature also finds that almost six thousand of those citizens sacrificed their lives to secure our nation's and the world's peace and freedom. The legislature finds that the hardships and sacrifices endured by the families and communities of these service men and women were critical to the eventual success of our nation's defense. The legislature also finds the memories of these stalwart patriots must be preserved to remind future generations of the price the members of the greatest generation paid to preserve our democratic way of life. The legislature further finds that to have a clearer reflection of these sacrifices on behalf of freedom and democracy, it is necessary to include the memories of all women and men of our armed forces, their family members, and others involved in the war effort so that these memories mirror our nation's rich ethnic diversity. In addition, the legislature recognizes the existence and contributions of the World War II memorial educational foundation. Members of the foundation include World War II veterans, and advisors from the office of veterans affairs, the superintendent of public instruction, and the secretary of state. The legislature intends to honor the veterans who served in World War II and their supportive families by preserving their memories so Washington's school children will never forget the significant human costs of war and the efforts of their ancestors to preserve and protect our country and the world from tyranny. The legislature further intends that members of the World War II memorial educational foundation have a strong advisory role in the preservation of those memories and the creation of instructional materials on the war.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.300 RCW to read as follows:

(1) The World War II oral history project is established for the purpose of providing oral history presentations, documentation, and other materials to assist the office of the superintendent of public instruction and educators in the development of a curriculum for use in kindergarten through twelfth grade.

(2) To the extent funds are appropriated or donated, the project shall be administered by the office of the superintendent of public instruction. The office shall convene an advisory committee to assist in the design and implementation of the project. The committee shall be composed of members of the World War II memorial educational foundation, the department of veterans affairs, the secretary of state's office, and legislators involved with and interested in the development of the oral history project. The committee may select its own chair and may expand its membership to include the services of other individuals, agencies, or organizations on the basis of need. The office shall provide staffing and administrative support to the advisory committee.

(3) The project will preserve for the education of Washington's school children the memories and history of our state's citizens who served their state and country as members of the armed forces or through national or community contributions

during World War II. The project is intended to preserve these memories and history through audiotapes, videotapes, films, stories, printed transcripts, digitally, and through other appropriate methods.

(4) As part of the project, the office of the superintendent of public instruction shall identify the requirements regarding instructional guides to help educators use the preserved material in age and grade appropriate ways.

(5) In its administration of the project, the office may carry out its responsibilities through contracts with filming and taping specialists, mini-grants to schools, contracts with the World War II memorial educational foundation, and through other means recommended by the foundation.

(6) By December 1, 2000, and every second year thereafter in which the project has received funding, the office shall report on the results of the project to the governor and the house of representatives and senate committees on education. The December 2000 report shall include, but need not be limited to, identification of the project's implementation strategies and resource requirements, and any curriculum standards developed through the project.

Passed the House March 4, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 113

[Engrossed House Bill 2952]

DISTANCE EDUCATION

AN ACT Relating to a study of distance education; and creating new sections.

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

NEW SECTION. **Sec. 1.** The legislature finds that the higher education environment in Washington is rapidly changing. The state is expected to experience a significant increase in the demand for higher education opportunities over the next decade. In addition, distance education opportunities continue to evolve with rapidly changing technology. The purpose of this act is to provide information to the legislature that would allow for more informed decision making about the role that distance education will play in serving the people of Washington.

NEW SECTION. **Sec. 2.** The higher education coordinating board, in conjunction with the state board for community and technical colleges, the office of financial management, and the state institutions of higher education, shall study distance education in Washington state and shall produce and deliver to the legislature no later than January 2001, a study that:

(1) Defines the different modes of distance education;

(2) Analyzes the impact of distance education on capital needs and facility utilization;

- (3) Evaluates the impact of distance delivery on instruction and faculty, as well as student support, technological support, and administrative support services;
- (4) Identifies obstacles in providing distance education instruction;
- (5) Analyzes the cost factors associated with the various distance delivery modes;
- (6) Assesses the role of the K-20 network in distance delivery;
- (7) Identifies strategies to create efficiencies in distance delivery through interinstitutional partnerships and collaborations; and
- (8) Evaluates the implications of distance delivery on access to higher education.

Passed the House February 9, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 114

[Substitute House Bill 2670]

LANDFILL DISPOSAL FACILITIES

AN ACT Relating to financial assurance requirements for landfill disposal facilities; amending RCW 70.95.215; and creating a new section.

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

Sec. 1. RCW 70.95.215 and 1985 c 436 s 1 are each amended to read as follows:

(1) By July 1, 1987, each holder or applicant of a permit for a landfill disposal facility issued under this chapter shall establish a reserve account to cover the costs of closing the facility in accordance with state and federal regulations. The account shall be designed to ensure that there will be adequate revenue available by the projected date of closure. A landfill disposal ((facilities)) facility maintained on private property for the sole use of the entity owning the site and a landfill disposal facility operated and maintained by a government shall not be required to establish a reserve account if, to the satisfaction of the department, ((they)) the entity or government provides another form of financial assurance adequate to comply with the requirements of this section.

(2) By July 1, 1986, the department shall adopt rules under chapter 34.05 RCW to implement subsection (1) of this section. The department is not required to adopt rules pertaining to other approved forms of financial assurance to cover the costs of closing a landfill disposal facility. The rules shall include but not be limited to:

(a) Methods to estimate closure costs, including postclosure monitoring, pollution prevention measures, and any other procedures required under state and federal regulations;

(b) Methods to ensure that reserve accounts receive adequate funds, including:

(i) Requirements that the reserve account be generated by user fees. However, the department may waive this requirement for existing landfills if user fees would be prohibitively high;

(ii) Requirements that moneys be placed in the reserve account on a regular basis and that the reserve account be kept separate from all other accounts; and

(iii) Procedures for the department to verify that adequate sums are deposited in the reserve account; and

(c) Methods to ensure that other types of financial assurance provided in accordance with subsection (1) of this section are adequate to cover the costs of closing the facility.

****NEW SECTION. Sec. 2. (1) The state solid waste advisory committee shall direct a study by the department of ecology on the adequacy of financing to assure landfill closure. The study shall include, but is not limited to:***

(a) A clear description of the financial assurance mechanisms authorized by law;

(b) A summary of current financial assurances for landfill closure currently in place for all landfills in the state. The department shall compile this information from existing sources such as capital facilities plans authorized under the growth management act, local government solid waste management plans and budgets, and financial audits by the state auditor. The summary shall include, but shall not be limited to:

(i) The estimated cost to close the landfill facility and the years to closure;

(ii) The financial mechanisms approved by the jurisdictional health department or the department to assure landfill closure; and

(iii) The status of financial mechanisms, including account balance, loans against, or encumbrances on the financial mechanisms; and

(c) The effect of various financial assurance mechanisms on consumers' rates.

(2) The report shall include recommendations for modifying requirements for financing mechanisms to assure landfill closure and maintaining and reporting information on the status of financial assurances. The solid waste advisory committee shall provide the report to the legislature by December 15, 2000.

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

Passed the House March 7, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 24, 2000, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2000.

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

"I am returning herewith, without my approval as to section 2, Substitute House Bill No. 2670 entitled:

"AN ACT Relating to financial assurance requirements for landfill disposal facilities;"

This bill provides government with needed flexibility in allowing alternative forms of financial assurance that landfill closure requirements can be met. Section 2 of the bill would have required the Solid Waste Advisory Committee (SWAC) to direct a study by the Department of Ecology (DOE) on the adequacy of financing to ensure landfill closure, and to report its findings to the Legislature by December 15, 2000.

Having the necessary financial resources secured for post-closure landfill costs is essential for adequate public health and environmental protection and to ensure the general public is not required to pay cleanup or closure costs. However, the bill raises a concern by having SWAC direct DOE in the study. SWAC includes several members with a financial stake in the outcome of the study. To avoid any appearance of fairness issues, yet make certain that this important analysis is completed, I have vetoed section 2 and direct DOE to complete the study in consultation with the Utilities and Transportation Commission and SWAC. DOE will inform the relevant standing committees of the Legislature of its progress, shall address all the issues outlined in SHB 2670, and shall submit a report to the Legislature by December 15, 2000.

For these reasons, I have vetoed section 2 of Substitute House Bill No. 2670.

With the exception of section 2, Substitute House Bill No. 2670 is approved."

CHAPTER 115

[Engrossed Substitute Senate Bill 6264]

INTERMEDIATE DRIVERS' LICENSES

AN ACT Relating to intermediate drivers' licenses; amending RCW 46.20.091, 46.20.105, 46.20.161, 46.20.311, 46.20.342, 28A.220.030, and 28A.220.040; adding new sections to chapter 46.20 RCW; adding a new section to chapter 28A.220 RCW; adding new sections to chapter 43.131 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature has recognized the need to develop a graduated licensing system in light of the disproportionately high incidence of motor vehicle crashes involving youthful motorists. This system will improve highway safety by progressively developing and improving the skills of younger drivers in the safest possible environment, thereby reducing the number of vehicle crashes.

NEW SECTION. Sec. 2. A new section is added to chapter 46.20 RCW to read as follows:

(1) An intermediate license authorizes the holder to drive a motor vehicle under the conditions specified in this section. An applicant for an intermediate license must be at least sixteen years of age and:

- (a) Have possessed a valid instruction permit for a period of not less than six months;
- (b) Have passed a driver licensing examination administered by the department;
- (c) Have passed a course of driver's education in accordance with the standards established in RCW 46.20.100;

(d) Present certification by his or her parent, guardian, or employer to the department stating (i) that the applicant has had at least fifty hours of driving experience, ten of which were at night, during which the driver was supervised by a person at least twenty-one years of age who has had a valid driver's license for at least three years, and (ii) that the applicant has not been issued a notice of traffic infraction or cited for a traffic violation that is pending at the time of the application for the intermediate license;

(e) Not have been convicted of or found to have committed a traffic violation within the last six months before the application for the intermediate license; and

(f) Not have been adjudicated for an offense involving the use of alcohol or drugs during the period the applicant held an instruction permit.

(2) For the first six months after the issuance of an intermediate license or until the holder reaches eighteen years of age, whichever occurs first, the holder of the license may not operate a motor vehicle that is carrying any passengers under the age of twenty who are not members of the holder's immediate family as defined in RCW 42.17.020. For the remaining period of the intermediate license, the holder may not operate a motor vehicle that is carrying more than three passengers who are under the age of twenty who are not members of the holder's immediate family.

(3) The holder of an intermediate license may not operate a motor vehicle between the hours of 1 a.m. and 5 a.m. except when the holder is accompanied by a parent, guardian, or a licensed driver who is at least twenty-five years of age.

(4) It is a traffic infraction for the holder of an intermediate license to operate a motor vehicle in violation of the restrictions imposed under this section.

(5) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(6) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if necessary for agricultural purposes.

(7) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if, for the twelve-month period following the issuance of the intermediate license, he or she:

(a) Has not been involved in an automobile accident; and

(b) Has not been convicted or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate licensee under this section.

NEW SECTION. Sec. 3. A new section is added to chapter 46.20 RCW to read as follows:

If a person issued an intermediate license is convicted of or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate license under section 2 of this act:

(1) On the first such conviction or finding the department shall mail the parent or guardian of the person a letter warning the person of the provisions of this section;

(2) On the second such conviction or finding, the department shall suspend the person's intermediate driver's license for a period of six months or until the person reaches eighteen years of age, whichever occurs first, and mail the parent or guardian of the person a notification of the suspension;

(3) On the third such conviction or finding, the department shall suspend the person's intermediate driver's license until the person reaches eighteen years of age, and mail the parent or guardian of the person a notification of the suspension.

For the purposes of this section, a single ticket for one or more traffic offenses constitutes a single traffic offense.

Sec. 4. RCW 46.20.091 and 1999 c 6 s 14 are each amended to read as follows:

(1) **Application.** In order to apply for a driver's license or instruction permit the applicant must provide his or her:

(a) Name of record, as established by documentation required under RCW 46.20.035;

(b) Date of birth, as established by satisfactory evidence of age;

(c) Sex;

(d) Washington residence address;

(e) Description;

(f) Driving licensing history, including:

(i) Whether the applicant has ever been licensed as a driver or chauffeur and, if so, (A) when and by what state or country; (B) whether the license has ever been suspended or revoked; and (C) the date of and reason for the suspension or revocation; or

(ii) Whether the applicant's application to another state or country for a driver's license has ever been refused and, if so, the date of and reason for the refusal; and

(g) Any additional information required by the department.

(2) **Sworn statement.** An application for an instruction permit or for an original driver's license must be made upon a form provided by the department. The form must include a section for the applicant to indicate whether he or she has received driver training and, if so, where. The identifying documentation verifying the name of record must be accompanied by the applicant's written statement that it is valid. The information provided on the form must be sworn to and signed by the applicant before a person authorized to administer oaths. An applicant who makes a false statement on an application for a driver's license or instruction permit is guilty of false swearing, a gross misdemeanor, under RCW 9A.72.040.

(3) **Driving records from other jurisdictions.** If a person previously licensed in another jurisdiction applies for a Washington driver's license, the department shall request a copy of the applicant's driver's record from the other

jurisdiction. The driving record from the other jurisdiction becomes a part of the driver's record in this state.

(4) **Driving records to other jurisdictions.** If another jurisdiction requests a copy of a person's Washington driver's record, the department shall provide a copy of the record. The department shall forward the record without charge if the other jurisdiction extends the same privilege to the state of Washington. Otherwise the department shall charge a reasonable fee for transmittal of the record.

Sec. 5. RCW 46.20.105 and 1987 c 463 s 3 are each amended to read as follows:

(1) The department may provide a method to distinguish the driver's license of a person who is under the age of twenty-one from the driver's license of a person who is twenty-one years of age or older.

(2) An instruction permit must be identified as an "instruction permit" and issued in a distinctive form as determined by the department.

(3) An intermediate license must be identified as an "intermediate license" and issued in a distinctive form as determined by the department.

Sec. 6. RCW 46.20.161 and 1999 c 308 s 2 are each amended to read as follows:

The department, upon receipt of a fee of twenty-five dollars, unless the driver's license is issued for a period other than five years, in which case the fee shall be five dollars for each year that the license is issued, which includes the fee for the required photograph, shall issue to every qualifying applicant a driver's license. A driver's license issued to a person under the age of eighteen is an intermediate license, subject to the restrictions imposed under section 2 of this act, until the person reaches the age of eighteen. The license must include a distinguishing number assigned to the licensee, the name of record, date of birth, Washington residence address, photograph, a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his or her usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

Sec. 7. RCW 46.20.311 and 1998 c 212 s 1 are each amended to read as follows:

(1)(a) 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 section 3 of this act, RCW 46.20.342, or other provision of law. Except for a suspension under section 3 of this act, RCW 46.20.289, 46.20.291(5), or 74.20A.320, 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. Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance with a child support order under chapter 74.20A RCW or a residential or visitation order, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order.

(b)(i) The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of twenty dollars.

(ii) 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 one hundred fifty dollars.

(2)(a) 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: (i) After the expiration of one year from the date the license or privilege to drive was revoked; (ii) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the expiration of two years for persons convicted of vehicular homicide; or (iv) after the expiration of the applicable revocation period provided by RCW 46.20.265.

(b)(i) 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.

(ii) If the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one hundred 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.

(c) 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)(a) 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.

(b) If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (i) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (ii) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be one hundred fifty dollars.

Sec. 8. RCW 46.20.342 and 1999 c 274 s 3 are each amended to read as follows:

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational driver's license;

(v) A conviction of RCW (~~46.20.420~~) 46.20.345, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;

(xiii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xv) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes;

(xvi) An administrative action taken by the department under chapter 46.20 RCW; or

(xvii) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) 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, as provided in RCW 46.20.289, (v) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, (~~or~~) (vi) the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or (vii) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under section 3 of this act relating to intermediate drivers' licenses, or any combination

of (i) through ~~((vi))~~ (vii), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended.

Sec. 9. RCW 28A.220.030 and 1979 c 158 s 196 are each amended to read as follows:

(1) The superintendent of public instruction is authorized to establish a section of traffic safety education, and through such section shall: Define a "realistic level of effort" required to provide an effective traffic safety education course, establish a level of driving competency required of each student to successfully complete the course, and ensure that an effective state-wide program is implemented and sustained, administer, supervise, and develop the traffic safety education program and shall assist local school districts in the conduct of their traffic safety education programs. The superintendent shall adopt necessary rules and regulations governing the operation and scope of the traffic safety education program; and each school district shall submit a report to the superintendent on the condition of its traffic safety education program: PROVIDED, That the superintendent shall monitor the quality of the program and carry out the purposes of this chapter.

(2) The board of directors of any school district maintaining a secondary school which includes any of the grades 10 to 12, inclusive, may establish and maintain a traffic safety education course. If a school district elects to offer a traffic safety education course and has within its boundaries a private accredited secondary school which includes any of the grades 10 to 12, inclusive, at least one class in traffic safety education shall be given at times other than regular school hours if there is sufficient demand therefor.

(3) The board of directors of a school district, or combination of school districts, may contract with any drivers' school licensed under the provisions of

chapter 46.82 RCW to teach the laboratory phase of the traffic safety education course. Instructors provided by any such contracting drivers' school must be properly qualified teachers of traffic safety education under the joint qualification requirements adopted by the superintendent of public instruction and the director of licensing.

(4) The superintendent shall establish a required minimum number of hours of continuing traffic safety education for traffic safety education instructors. The superintendent may phase in the requirement over not more than five years.

Sec. 10. RCW 28A.220.040 and 1984 c 258 s 331 are each amended to read as follows:

(1) Each school district shall be reimbursed from funds appropriated for traffic safety education ~~((+PROVIDED, That))~~.

(a) The state superintendent shall determine the per-pupil reimbursement amount for the traffic safety education course to be funded by the state. Each school district offering an approved standard traffic safety education course shall be reimbursed or granted an amount up to the level established by the superintendent of public instruction as may be appropriated.

(b) The state superintendent may provide per-pupil reimbursements to school districts only where all the traffic educators have satisfied the continuing education requirement of RCW 28A.220.030(4).

(2) The board of directors of any school district or combination of school districts may establish a traffic safety education fee, which fee when imposed shall be required to be paid by any duly enrolled student in any such school district prior to or while enrolled in a traffic safety education course. Traffic safety education fees collected by a school district shall be deposited with the county treasurer to the credit of such school district, to be used to pay costs of the traffic safety education course.

NEW SECTION. Sec. 11. A new section is added to chapter 28A.220 RCW to read as follows:

The superintendent of public instruction, in consultation with the department of licensing, shall adopt rules for implementing section 2(1)(d) of this act.

NEW SECTION. Sec. 12. A new section is added to chapter 43.131 RCW to read as follows:

The intermediate driver's license program created by this act shall be reviewed under this chapter before June 30, 2008. The department of licensing, in cooperation with the Washington traffic safety commission, shall provide the information necessary for the joint legislative audit and review committee to provide the required review.

NEW SECTION. Sec. 13. A new section is added to chapter 43.131 RCW to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2009:

- (1) Section 1 of this act;
- (2) Section 2 of this act;
- (3) Section 3 of this act;
- (4) The amendment of RCW 46.20.105 by section 5 of this act;
- (5) The amendment of RCW 46.20.161 by section 6 of this act;
- (6) The amendment of RCW 46.20.311 by section 7 of this act;
- (7) The amendment of RCW 46.20.342 by section 8 of this act;
- (8) Section 11 of this act.

NEW SECTION. **Sec. 14.** Sections 1 through 10 of this act take effect July 1, 2001.

Passed the Senate March 6, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 116

[Senate Bill 6172]

BONE MARROW DONATION—MINORS

AN ACT Relating to bone marrow donation; and adding a new section to chapter 70.54 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 70.54 RCW to read as follows:

A person's status as a minor may not disqualify him or her from bone marrow donation.

Passed the Senate February 9, 2000.

Passed the House March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 117

[Substitute Senate Bill 5330]

RESIDENT TUITION—MILITARY PERSONNEL

AN ACT Relating to resident tuition for active duty military personnel; amending RCW 28B.15.012, 28B.15.012, and 28B.15.014; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 28B.15.012 and 1999 c 320 s 5 are each amended to read as follows:

Whenever used in chapter 28B.15 RCW:

- (1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) A student who is on active military duty stationed in the state;

(f) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state;

~~((f))~~ (g) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725; or

~~((g))~~ (h) A student who meets the requirements of RCW 28B.15.0131 or 28B.15.0139: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of RCW 28B.15.012 and 28B.15.013. Except for students qualifying under subsection (2)~~((f))~~ (g) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter. This condition shall not apply to students from Columbia, Multnomah,

Clatsop, or Washington county, Oregon participating in the border county pilot project under RCW 28B.80.806, 28B.80.807, and 28B.15.0139.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in RCW 28B.15.012 and 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require.

Sec. 2. RCW 28B.15.012 and 1997 c 433 s 2 are each amended to read as follows:

Whenever used in chapter 28B.15 RCW:

(1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within

the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) A student who is on active military duty stationed in the state;

(f) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state;

~~((f))~~ (g) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725; or

~~((g))~~ (h) A student who meets the requirements of RCW 28B.15.0131: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of RCW 28B.15.012 and 28B.15.013. Except for students qualifying under subsection (2)~~((f))~~ (g) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in RCW 28B.15.012 and 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or

legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require.

Sec. 3. RCW 28B.15.014 and 1997 c 433 s 3 are each amended to read as follows:

Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may exempt the following nonresidents from paying all or a portion of the nonresident tuition fees differential:

(1) Any person who resides in the state of Washington and who holds a graduate service appointment designated as such by a public institution of higher education or is employed for an academic department in support of the instructional or research programs involving not less than twenty hours per week during the term such person shall hold such appointment.

(2) Any faculty member, classified staff member or administratively exempt employee holding not less than a half time appointment at an institution who resides in the state of Washington, and the dependent children and spouse of such persons.

~~(3) ((Active-duty military personnel stationed in the state of Washington. —(4)))~~ Any immigrant refugee and the spouse and dependent children of such refugee, if the refugee (a) is on parole status, or (b) has received an immigrant visa, or (c) has applied for United States citizenship.

~~((5))~~ (4) Any dependent of a member of the United States congress representing the state of Washington.

NEW SECTION. **Sec. 4.** Section 1 of this act expires June 30, 2002.

NEW SECTION. **Sec. 5.** Section 2 of this act takes effect June 30, 2002.

Passed the Senate February 11, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 118

[Engrossed Second Substitute Senate Bill 6683]
TRAFFIC ENFORCEMENT—REPORTS

AN ACT Relating to reporting information on routine traffic enforcement; adding new sections to chapter 43.43 RCW; creating a new section; 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 43.43 RCW to read as follows:

(1) Beginning May 1, 2000, the Washington state patrol shall collect, and report semiannually to the criminal justice training commission, the following information:

- (a) The number of individuals stopped for routine traffic enforcement, whether or not a citation or warning was issued;
- (b) Identifying characteristics of the individual stopped, including the race or ethnicity, approximate age, and gender;
- (c) The nature of the alleged violation that led to the stop;
- (d) Whether a search was instituted as a result of the stop; and
- (e) Whether an arrest was made, or a written citation issued, as a result of either the stop or the search.

(2) The criminal justice training commission and the Washington state patrol shall compile the information required under subsection (1) of this section and make a report to the legislature no later than December 1, 2000.

NEW SECTION. Sec. 2. A new section is added to chapter 43.43 RCW to read as follows:

(1) The Washington state patrol shall work with the criminal justice training commission and the Washington association of sheriffs and police chiefs to develop (a) further criteria for collection and evaluation of the data collected under section 1 of this act, and (b) training materials for use by the state patrol and local law enforcement agencies on the issue of racial profiling.

(2) The Washington state patrol, criminal justice training commission, and Washington association of sheriffs and police chiefs shall encourage local law enforcement agencies to voluntarily collect the data set forth under section 1(1) of this act.

NEW SECTION. Sec. 3. The Washington association of sheriffs and police chiefs shall report to the legislature by December 1, 2000, the following information:

- (1) The names and number of local law enforcement agencies voluntarily collecting data on potential racial profiling;
- (2) The type of data being collected by each participating agency; and
- (3) The manner in which the agencies are using the data collected.

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 takes effect immediately.

Passed the Senate February 15, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 119

[Engrossed Second Substitute Senate Bill 6400]

DOMESTIC VIOLENCE

AN ACT Relating to domestic violence; amending RCW 9.94A.220, 10.31.100, 10.99.020, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.26.137, 26.44.063, 26.44.067, 26.50.035,

26.50.060, 26.50.070, 10.99.040, 10.99.045, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.50.160, 26.52.070, and 74.34.130; reenacting and amending RCW 9.94A.320 and 9.94A.440; adding a new section to chapter 26.50 RCW; adding a new section to chapter 74.34 RCW; creating new sections; 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 26.50 RCW to read as follows:

The department of social and health services, in its discretion, may seek the relief provided in this chapter on behalf of and with the consent of any vulnerable adult as those persons are defined in RCW 74.34.020. Neither the department nor the state of Washington shall be liable for failure to seek relief on behalf of any persons under this section.

NEW SECTION. **Sec. 2.** A new section is added to chapter 74.34 RCW to read as follows:

(1) An order for protection of a vulnerable adult issued under this chapter which restrains the respondent or another person from committing acts of abuse, prohibits contact with the petitioner, excludes the person from any specified location, or prohibits the person from coming within a specified distance from a location, 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 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(2) Whenever an order for protection of a vulnerable adult is issued under this chapter, and the respondent or person to be restrained knows of the order, a violation of a provision restraining the person from committing acts of abuse, prohibiting contact with the petitioner, excluding the person from any specified location, or prohibiting the person from coming within a specified distance of a location, shall be punishable under RCW 26.50.110, regardless of whether the person is a family or household member as defined in RCW 26.50.010.

Sec. 3. RCW 9.94A.220 and 1994 c 271 s 901 are each amended to read as follows:

(1) When an offender has completed the requirements of the sentence, the secretary of the department or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge.

(2) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(3) Except as provided in subsection (4) of this section, the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the

use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(4) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order issued under chapter 10.99 RCW that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(5) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody.

Sec. 4. RCW 10.31.100 and 1999 c 184 s 14 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (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, 26.09.050, 26.09.060, 26.10.040, 26.10.115;~~) 26.44.063, or chapter ~~10.99, 26.09, 26.10, 26.26~~ ((RCW, or chapter)), 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or ~~((of a provision))~~ excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted 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 family or household members 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 46.61.5249, 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 ((88.12.025)) 79A.60.040 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. 5. RCW 10.99.020 and 1997 c 338 s 53 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, 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 person 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) Drive-by shooting (RCW 9A.36.045);
- (f) Reckless endangerment (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, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, ~~((or))~~ 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or section 2 of this act);

(s) ~~((Violation of the provisions of a protection order or no-contact order restraining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care (RCW 26.50.060, 26.50.070, 26.50.130, 10.99.040, or 10.99.050);~~

~~—((t))~~ Rape in the first degree (RCW 9A.44.040);
~~((+))~~ (t) Rape in the second degree (RCW 9A.44.050);
~~((+))~~ (u) Residential burglary (RCW 9A.52.025);
~~((w))~~ (v) Stalking (RCW 9A.46.110); and
~~((x))~~ (w) Interference with the reporting of domestic violence (RCW 9A.36.150).

(4) "Victim" means a family or household member who has been subjected to domestic violence.

Sec. 6. RCW 26.09.050 and 1995 c 93 s 2 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 or enjoining 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, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, 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)) 26.50 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.

(4) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

Sec. 7. RCW 26.09.060 and 1995 c 246 s 26 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) 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) Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and

(e) 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.

(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.

(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.

(7) 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, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, 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))~~ 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(8) 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. Entry into the ~~((law enforcement))~~ computer-based criminal intelligence 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) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

(10) 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 ~~((+0))~~ (11) 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.

~~((+0))~~ (11) 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. 8. RCW 26.10.040 and 1995 c 93 s 3 are each amended to read as follows:

(1) In entering an order under this chapter, the court shall consider, approve, or make provision for:

~~((+))~~ (a) Child custody, visitation, and the support of any child entitled to support;

~~((2))~~ (b) The allocation of the children as a federal tax exemption;
~~((3))~~ (c) Any necessary continuing restraining orders, including the provisions contained in RCW 9.41.800;

~~((4))~~ (d) 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))~~ (e) Restraining orders issued under this section restraining or enjoining 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, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, 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))~~ 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST~~((:))~~.

~~((6))~~ (2) 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.

(3) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

Sec. 9. RCW 26.10.115 and 1995 c 246 s 29 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) Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and

(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.

(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.

(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.

(7) Restraining orders issued under this section restraining or enjoining 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, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, 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))~~ 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(8) 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. Entry into the ~~((law enforcement))~~ computer-based criminal intelligence 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) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified

in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

(10) 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.

~~((+0))~~ (11) 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. 10. RCW 26.26.130 and 1997 c 58 s 947 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 9.41.800.

(4) The judgment and order shall contain the social security numbers of all parties to the order.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) Restraining orders issued under this section restraining or enjoining 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, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, 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))~~ 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(11) 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.

(12) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

Sec. 11. RCW 26.26.137 and 1995 c 246 s 32 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) 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) Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and

(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) Restraining orders issued under this section restraining or enjoining 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, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, 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))~~ 26.50 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) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

(7) 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.

~~((7))~~ (8) 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.

~~((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 petition is dismissed; and

(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. 12. RCW 26.44.063 and 1993 c 412 s 15 are each amended to read as follows:

(1) It is the intent of the legislature to minimize trauma to a child involved in an allegation of sexual or physical abuse. The legislature declares that removing the child from the home often has the effect of further traumatizing the child. It is, therefore, the legislature's intent that the alleged offender, rather than the child, shall be removed from the home and that this should be done at the earliest possible point of intervention in accordance with RCW 10.31.100, 13.34.130, this section, and RCW 26.44.130.

(2) In any judicial proceeding in which it is alleged that a child has been subjected to sexual or physical abuse, if the court finds reasonable grounds to believe that an incident of sexual or physical abuse has occurred, the court may, on its own motion, or the motion of the guardian ad litem or other parties, issue a temporary restraining order or preliminary injunction restraining or enjoining the person accused of committing the abuse from:

- (a) Molesting or disturbing the peace of the alleged victim;
- (b) Entering the family home of the alleged victim except as specifically authorized by the court; ~~((or))~~
- (c) Having any contact with the alleged victim, except as specifically authorized by the court;
- (d) Knowingly coming within, or knowingly remaining within, a specified distance of a specified location.

(3) In issuing a temporary restraining order or preliminary injunction, the court may impose any additional restrictions that the court in its discretion determines are necessary to protect the child from further abuse or emotional trauma pending final resolution of the abuse allegations.

(4) The court shall issue a temporary restraining order prohibiting a person from entering the family home if the court finds that the order would eliminate the need for an out-of-home placement to protect the child's right to nurturance, health, and safety and is sufficient to protect the child from further sexual or physical abuse or coercion.

(5) The court may issue a temporary restraining order without requiring notice to the party to be restrained or other parties only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(6) A temporary restraining order or preliminary injunction:

- (a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding; and
- (b) May be revoked or modified.

(7) The person having physical custody of the child shall have an affirmative duty to assist in the enforcement of the restraining order including but not limited to a duty to notify the court as soon as practicable of any violation of the order, a duty to request the assistance of law enforcement officers to enforce the order, and a duty to notify the department of social and health services of any violation of the order as soon as practicable if the department is a party to the action. Failure by

the custodial party to discharge these affirmative duties shall be subject to contempt proceedings.

(8) Willful violation of a court order entered under this section is a misdemeanor. A written order shall contain the court's directive and shall bear the legend: "Violation of this order with actual notice of its terms is a criminal offense under chapter 26.44 RCW, is also subject to contempt proceedings, and will subject a violator to arrest."

(9) If a restraining order issued under this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

Sec. 13. RCW 26.44.067 and 1993 c 412 s 16 are each amended to read as follows:

(1) Any person having had actual notice of the existence of a restraining order issued by a court of competent jurisdiction pursuant to RCW 26.44.063 who refuses to comply with the provisions of such order shall be guilty of a misdemeanor.

(2) The notice requirements of subsection (1) of this section may be satisfied by the peace officer giving oral or written evidence to the person subject to the order by reading from or handing to that person a copy certified by a notary public or the clerk of the court to be an accurate copy of the original court order which is on file. The copy may be supplied by the court or any party.

(3) The remedies provided in this section shall not apply unless restraining orders subject to this section (~~shall~~) bear this legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.44 RCW AND IS ALSO SUBJECT TO CONTEMPT PROCEEDINGS.

(4) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule. No right of action shall accrue against any peace officer acting upon a properly certified copy of a court order lawful on its face if such officer employs otherwise lawful means to effect the arrest.

Sec. 14. RCW 26.50.035 and 1995 c 246 s 4 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)), modifying, and terminating a domestic violence protection order as provided under this chapter, ((a)) an anti-harassment no-contact order as provided ((by RCW 10.99.040)) under chapter 9A.46 RCW, a domestic violence no-contact order as provided under chapter 10.99 RCW, a restraining order as provided ((by RCW 26.09.060)) under chapter 26.09, 26.10, 26.26, and 26.44 RCW, ((a.1)) an antiharassment protection order as provided by chapter 10.14 RCW, and a foreign protection order as defined in chapter 26.52 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 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. 15. RCW 26.50.060 and 1999 c 147 s 2 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~~) that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) 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))~~ (e) Order the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150;

~~((e))~~ (f) 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))~~ (g) Require the respondent to pay the administrative court costs 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))~~ attorneys' fees;

~~((g))~~ (h) 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))~~ (i) 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;

~~((i))~~ (j) Consider the provisions of RCW 9.41.800;

~~((j))~~ (k) 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))~~ (l) Order use of a vehicle.

(2) If a ~~((restraining))~~ protection 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, 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 grant relief for a fixed period or 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 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, 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, service by publication, or service by mail and whether the court has approved service by publication or mail 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. 16. RCW 26.50.070 and 1996 c 248 s 14 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) Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;

(c) Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) 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))~~ (e) 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))~~ (f) Considering the provisions of RCW 9A.01.001.

(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 RCW 26.50.123. 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, 26.50.085, and 26.50.123, 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. 17. RCW 9.94A.320 and 1999 c 352 s 3, 1999 c 322 s 5, and 1999 c 45 s 4 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1 (RCW 9A.40.020) Leading Organized Crime (RCW 9A.82.060(1)(a)) Malicious explosion 3 (RCW 70.74.280(3)) Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii)) Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
IX	Assault of a Child 2 (RCW 9A.36.130) Controlled Substance Homicide (RCW 69.50.415)

- Explosive devices prohibited (RCW 70.74.180)
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW ((88.12.029)) 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson I (RCW 9A.48.020)
- Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW ((88.12.029)) 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
- Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine (RCW 69.50.440)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)

- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW ~~((88-12-029))~~ 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV (RCW 69.50.401(a)(1)(i))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- V Abandonment of dependent person 1 (RCW 9A.42.060)

Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
 Child Molestation 3 (RCW 9A.44.089)
 Criminal Mistreatment 1 (RCW 9A.42.020)
 Custodial Sexual Misconduct 1 (RCW 9A.44.160)
 Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or section 2 of this act)
 Extortion 1 (RCW 9A.56.120)
 Extortionate Extension of Credit (RCW 9A.82.020)
 Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
 Incest 2 (RCW 9A.64.020(2))
 Kidnapping 2 (RCW 9A.40.030)
~~((On and after July 1, 2000: No Contact Order Violation: Domestic Violence Pretrial Condition (RCW 10.99.040(4) (b) and (c))~~
~~On and after July 1, 2000: No Contact Order Violation: Domestic Violence Sentence Condition (RCW 10.99.050(2))~~
~~On and after July 1, 2000: Protection Order Violation: Domestic Violence Civil Action (RCW 26.50.110 (4) and (5))~~
~~On and after July 1, 2000: Stalking (RCW 9A.46.110))~~
 Perjury 1 (RCW 9A.72.020)
 Persistent prison misbehavior (RCW 9.94.070)
 Possession of a Stolen Firearm (RCW 9A.56.310)
 Rape 3 (RCW 9A.44.060)
 Rendering Criminal Assistance 1 (RCW 9A.76.070)
 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)

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- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW ((~~88.12.032~~)) 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury Accident (RCW 46.52.020(4))
- Hit and Run with Vessel—Injury Accident (RCW ((~~88.12.155(3)~~)) 79A.60.200(3))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- Malicious Harassment (RCW 9A.36.080)
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(a)(1) (iii) through (v))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)

Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
Burglary 2 (RCW 9A.52.030)
Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
Criminal Gang Intimidation (RCW 9A.46.120)
Criminal Mistreatment 2 (RCW 9A.42.030)
Custodial Assault (RCW 9A.36.100)
Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
Escape 2 (RCW 9A.76.120)
Extortion 2 (RCW 9A.56.130)
Harassment (RCW 9A.46.020)
Intimidating a Public Servant (RCW 9A.76.180)
Introducing Contraband 2 (RCW 9A.76.150)
Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6))
Malicious Injury to Railroad Property (RCW 81.60.070)
Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
Patronizing a Juvenile Prostitute (RCW 9.68A.100)
Perjury 2 (RCW 9A.72.030)
Possession of Incendiary Device (RCW 9.40.120)
Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
Promoting Prostitution 2 (RCW 9A.88.080)
Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
Securities Act violation (RCW 21.20.400)
Tampering with a Witness (RCW 9A.72.120)
Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
Theft of Livestock 2 (RCW 9A.56.080)
Unlawful Imprisonment (RCW 9A.40.040)

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- Unlawful possession of firearm in the second degree (RCW 9A.040(1)(b))
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II
 - Computer Trespass 1 (RCW 9A.52.110)
 - Counterfeiting (RCW 9.16.035(3))
 - Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
 - Escape from Community Custody (RCW 72.09.310)
 - Health Care False Claims (RCW 48.80.030)
 - Malicious Mischief 1 (RCW 9A.48.070)
 - Possession of controlled substance that is either heroin or narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(d))
 - Possession of phencyclidine (PCP) (RCW 69.50.401(d))
 - Possession of Stolen Property 1 (RCW 9A.56.150)
 - Theft 1 (RCW 9A.56.030)
 - Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
 - Trafficking in Insurance Claims (RCW 48.30A.015)
 - Unlawful Practice of Law (RCW 2.48.180)
 - Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I
 - Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
 - False Verification for Welfare (RCW 74.08.055)
 - Forged Prescription (RCW 69.41.020)
 - Forged Prescription for a Controlled Substance (RCW 69.50.403)
 - Forgery (RCW 9A.60.020)
 - Malicious Mischief 2 (RCW 9A.48.080)
 - Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-

narcotic from Schedule I-V (except phencyclidine or flunitrazepam) (RCW 69.50.401(d))

Possession of Stolen Property 2 (RCW 9A.56.160)

Reckless Burning 1 (RCW 9A.48.040)

Taking Motor Vehicle Without Permission (RCW 9A.56.070)

Theft 2 (RCW 9A.56.040)

Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(4))

Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)

Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))

Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 18. RCW 10.99.040 and 1997 c 338 s 54 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)(a) 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 or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of RCW 9A.41.800.

(c) 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. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. 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 except as provided in (b) and (c) of this subsection (4). 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) A willful violation of a court order issued under this section is a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order issued under this chapter, a domestic violence protection order issued under chapter 26.09, 26.10, 26.26, or 26.50 RCW, or any federal or out-of-state order that is comparable to a no-contact order or protection order issued under Washington law. The previous convictions may involve the same victim or other victims specifically protected by the no-contact orders or protection orders the offender violated)) punishable under RCW 26.50.110.~~

~~((d))~~ (b) 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))~~ 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, 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."

(c) A certified copy of the order shall be provided to the victim.

(5) 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))~~ (6) Whenever ~~((an))~~ a no-contact 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))~~ computer-based criminal intelligence 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. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

Sec. 19. RCW 10.99.045 and 1998 c 55 s 2 are each amended to read as follows:

(1) A defendant arrested for an offense involving domestic violence as defined by RCW 10.99.020 shall be required to appear in person before a magistrate within one judicial day after the arrest.

(2) A defendant who is charged by citation, complaint, or information with an offense involving domestic violence as defined by RCW 10.99.020 and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of the appearances provided in subsection (1) or (2) of this section, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment. The court may include in the order any conditions authorized under RCW 9.41.800 and 10.99.040.

(4) Appearances required pursuant to this section are mandatory and cannot be waived.

(5) The no-contact order shall be issued and entered with the appropriate law enforcement agency pursuant to the procedures outlined in RCW 10.99.040 (2) and (4).

Sec. 20. RCW 10.99.050 and 1997 c 338 s 55 are each amended to read as follows:

(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2)(a) Willful violation of a court order issued under this section is ~~((a gross misdemeanor. 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, 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. A willful violation of a court order issued under this section is also a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order issued under this chapter, or a domestic violence protection order issued under chapter 26.09, 26.10, 26.26, or 26.50 RCW, or any federal or out-of-state order that is comparable to a no-contact order or protection order that is issued under Washington law. The previous convictions may involve the same victim or other victims specifically protected by the no-contact orders or protection orders the offender violated))~~ punishable under RCW 26.50.110.

(b) The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter ~~((+0.99))~~ 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(3) Whenever an order prohibiting contact is issued pursuant to 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))~~ computer-based criminal intelligence 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.

(4) If an order prohibiting contact issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

Sec. 21. RCW 26.09.300 and 1996 c 248 s 9 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 restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, is ~~((a misdemeanor))~~ punishable under RCW 26.50.110.

(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 restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(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. 22. RCW 26.10.220 and 1999 c 184 s 11 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 restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another, or prohibiting the person from knowingly coming within, or knowingly

remaining within, a specified distance of a location, is ((a-gross-misdemeanor)) punishable under RCW 26.50.110.

(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 restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(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. 23. RCW 26.26.138 and 1999 c 184 s 12 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 restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, is ((a-gross-misdemeanor)) punishable under RCW 26.50.110.

(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 restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(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. 24. RCW 26.50.110 and 1996 c 248 s 16 are each amended to read as follows:

(1) Whenever an order (~~for protection~~) is granted under this chapter, chapter 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, 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 day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW 10.31.100(2) (a) or (b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section. 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, chapter 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, 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~~) issued under this chapter, chapter 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, 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, chapter 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, 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~~) such an 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) A violation of a court order issued under this chapter, chapter 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of (~~a no-contact~~) an order issued under this chapter, chapter 10.99 (RCW, a domestic violence protection order issued under chapter 26.09, 26.10, or 26.26 RCW or this chapter, or any federal or out-of-state order that is comparable to a no-contact or protection order issued under Washington law), 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the (~~no-contact orders or protection~~) orders the offender violated.

(6) 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, chapter 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, 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. 25. RCW 26.50.160 and 1995 c 246 s 18 are each amended 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 data base 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 chapters 9A.46 and 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))~~ 26.26 RCW, every restraining order issued on behalf of an abused child or adult dependent person under chapter 26.44 RCW, every foreign protection order filed under chapter 26.52 RCW, and every order for protection of a vulnerable adult under chapter 74.34 RCW. When a guardian or the department of social and health services has petitioned for relief on behalf of an abused child, adult dependent person, or vulnerable adult, the name of the person on whose behalf relief was sought shall be included in the data base as a party rather than the guardian or department;

(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.

Sec. 26. RCW 26.52.070 and 1999 c 184 s 9 are each amended to read as follows:

(1) Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person under restraint from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime, is ~~((a gross misdemeanor except as provided in subsections (3) and (4) of this section. Upon conviction, and in addition to any other penalties provided by law, the court may require the person under restraint to submit to electronic monitoring. The court shall specify who will provide the electronic monitoring services, and the terms under which the monitoring will be performed. The order also may include a requirement that the person under restraint pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring))~~ punishable under RCW 26.50.110.

(2) A peace officer shall arrest without a warrant and take into custody a person when the peace officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge

and the person under restraint has violated a provision of the foreign protection order that prohibits the person under restraint from contacting or communicating with another person, or a provision that excludes the person under restraint from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime. 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)) An assault that is a violation of a valid foreign protection order 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 conduct in violation of a valid foreign protection 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:~~

~~— (4) A violation of a valid foreign protection order is a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order issued under chapter 10.99 RCW, a domestic violence protection order issued under chapter 26.09, 26.10, 26.26, or 26.50 RCW, or a federal or out-of-state order that is comparable to a no-contact or protection order issued under Washington law. The previous convictions may involve the same person entitled to protection or other person entitled to protection specifically protected by the no-contact orders or protection orders the offender violated.))~~

Sec. 27. RCW 74.34.130 and 1999 c 176 s 13 are each amended to read as follows:

The court may order relief as it deems necessary for the protection of the petitioner, including, but not limited to the following:

(1) Restraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation;

(2) Excluding the respondent from petitioner's residence for a specified period or until further order of the court;

(3) Prohibiting contact by respondent for a specified period or until further order of the court;

(4) Prohibiting the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(5) Requiring an accounting by respondent of the disposition of petitioner's income or other resources;

~~((5))~~ (6) Restraining the transfer of property for a specified period not exceeding ninety days; and

~~((6))~~ (7) Requiring the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Any relief granted by an order for protection, other than a judgment for costs, shall be for a fixed period not to exceed one year.

Sec. 28. RCW 9.94A.440 and 1999 c 322 s 6 and 1999 c 196 s 11 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.

(a) 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(8).

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)
Stalking
Custodial Assault
~~((No-Contact Order-Domestic-Violence-Pretrial (RCW 10.99.040(4) (b) and (e))
—No-Contact Order-Domestic-Violence-Sentence (RCW 10.99.050(2))
—Protection Order-Domestic-Violence-Civil (RCW 26.50.110 (4) and (5))))~~
Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or section 2 of this act)
Counterfeiting (if a violation of RCW 9.16.035(4))
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

(i) 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.

(ii) 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.

(b) GUIDELINES/COMMENTARY:

(i) 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:

(A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(B) The completion of necessary laboratory tests; and

(C) 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.

(ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(A) Probable cause exists to believe the suspect is guilty; and

(B) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(C) 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.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

- (A) Polygraph testing;
- (B) Hypnosis;
- (C) Electronic surveillance;
- (D) Use of informants.

(iv) 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.

(v) 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.

****NEW SECTION. Sec. 29. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2000, in the omnibus appropriations act, this act is null and void.***

*Sec. 29 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 30. Section 17 of this act takes effect July 1, 2000.

NEW SECTION. Sec. 31. The penalties prescribed in this act apply to violations of court orders which occur on or after July 1, 2000, regardless of the date the court issued the order.

Passed the Senate March 7, 2000.

Passed the House March 3, 2000.

Approved by the Governor March 24, 2000, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2000.

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

"I am returning herewith, without my approval as to section 29, Engrossed Second Substitute Senate Bill No. 6400 entitled:

"AN ACT Relating to domestic violence;"

This bill improves and clarifies our laws dealing with domestic violence in numerous ways, without imposing costs on state or local government. However, section 29 would make the entire bill "null and void" unless referenced and funded in the budget. Because the bill imposes no costs and requires no funding or reference in the budget, I have vetoed section 29.

For these reasons, I have vetoed section 29 of Engrossed Second Substitute Senate Bill No. 6400.

With the exception of section 29, Engrossed Second Substitute Senate Bill No. 6400 is approved."

CHAPTER 120

[Substitute Senate Bill] 6233]

DEVELOPMENTAL DISABILITIES ENDOWMENT TRUST FUND

AN ACT Relating to the developmental disabilities endowment trust fund; amending RCW 43.330.200, 43.330.210, 43.330.220, and 43.330.230; amending 1999 c 384 s 1 (uncodified); and adding new sections to chapter 43.330 RCW.

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

Sec. 1. 1999 c 384 s 1 (uncodified) is amended to read as follows:

The legislature recognizes that the main and most enduring support for persons with developmental disabilities, along with public resources, is their immediate and extended families. The legislature recognizes that these families are searching for ways to provide for the long-term continuing care of their disabled family member when the family can no longer provide that care. It is the intent of the legislature to encourage and assist families to engage in long-range financial planning and to contribute to the lifetime care of their disabled family member. To further these objectives, this chapter is enacted to finance ~~((long-term care))~~ lifetime services and supports for persons with developmental disabilities through an endowment funded jointly by the investment of public funds and dedicated family contributions.

The establishment of this endowment is not intended to diminish the state's responsibility for funding services currently available to future endowment participants, subject to available funding, nor is it the intent of the legislature, by the creation of this public/private endowment, to impose additional, unintended financial liabilities on the public.

NEW SECTION. Sec. 2. A new section is added to chapter 43.330 RCW to read as follows:

The definitions in this section apply throughout RCW 43.330.200 through 43.330.230 and sections 4 and 7 of this act.

(1) "Developmental disability" has the meaning in RCW 71A.10.020(3).

(2) "Developmental disabilities endowment trust fund" means the fund established in the custody of the state treasurer in section 3 of this act, comprised of private, public, or private and public sources, to finance services for persons with developmental disabilities. All moneys in the fund, all property and rights purchased from the fund, and all income attributable to the fund, shall be held in trust by the state investment board, as provided in RCW 43.33A.030, for the exclusive benefit of fund beneficiaries. The principal and interest of the endowment fund must be maintained until such time as the governing board policy specifies except for the costs and expenses of the state treasurer and the state investment board otherwise provided for in this act.

(3) "Governing board" means the developmental disabilities endowment governing board in section 4 of this act.

(4) "Individual trust account" means accounts established within the endowment trust fund for each individual named beneficiary for the benefit of whom contributions have been made to the fund. The money in each of the individual accounts is held in trust as provided for in subsection (2) of this section, and shall not be considered state funds or revenues of the state. The governing board serves as administrator, manager, and recordkeeper for the individual trust accounts for the benefit of the individual beneficiaries. The policies governing the disbursements, and the qualifying services for the trust accounts, shall be established by the governing board. Individual trust accounts are separate accounts within the developmental disabilities endowment trust fund, and are invested for the beneficiaries through the endowment trust fund.

Sec. 3. RCW 43.330.200 and 1999 c 384 s 2 are each amended to read as follows:

(1) The developmental disabilities endowment trust fund is created in the custody of the state treasurer. Expenditures from the fund may be used only for the purposes of the developmental disabilities endowment established under this chapter, except for expenses of the state investment board and the state treasurer as specified in subsection (2) of this section. Only the developmental disabilities endowment governing board or the board's designee may authorize expenditures from the fund. The fund shall retain its interest earnings in accordance with RCW 43.79A.040.

(2) The developmental disabilities endowment governing board shall deposit in the fund all money received for the program, including state appropriations and private (~~matching~~) contributions. With the exception of investment and operating costs associated with the investment of money by the (~~state treasurer and the~~) investment board paid under RCW (~~43.08.190, 43.79A.040;~~) 43.33A.160(~~;~~) and 43.84.160 and the expenses and operating costs of the state treasurer paid under RCW 43.08.190 and 43.79A.040, the fund shall be credited with all investment income earned by the fund. Disbursements from the fund are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. However, money used for program administration by the department or the governing board is subject to the allotment and budgetary controls of chapter 43.88 RCW, and an appropriation is required for these expenditures.

NEW SECTION. Sec. 4. A new section is added to chapter 43.330 RCW to read as follows:

(1) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the developmental disabilities endowment trust fund. All investment and operating costs associated with the investment of money shall be paid under RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the fund.

(2) All investments made by the state investment board shall be made with the exercise of that degree of judgment and care under RCW 43.33A.140 and the investment policy established by the state investment board.

(3) As deemed appropriate by the investment board, money in the fund may be commingled for investment with other funds subject to investment by the board.

(4) The authority to establish all policies relating to the fund, other than the investment policies as set forth in subsections (1) through (3) of this section, resides with the governing board acting in accordance with the principles set forth in RCW 43.330.220. With the exception of expenses of the state treasurer in RCW 43.330.200 and the investment board set forth in subsection (1) of this section, disbursements from the fund shall be made only on the authorization of the governing board or the board's designee, and money in the fund may be spent only for the purposes of the developmental disabilities endowment program as specified in this chapter.

(5) The investment board shall routinely consult and communicate with the governing board on the investment policy, earnings of the trust, and related needs of the program.

Sec. 5. RCW 43.330.210 and 1999 c 384 s 4 are each amended to read as follows:

The developmental disabilities endowment governing board is established to design and administer the developmental disabilities endowment. To the extent funds are appropriated for this purpose, the director of the department of community, trade, and economic development shall provide staff and administrative support to the governing board.

(1) The governing board shall consist of seven members as follows:

(a) Three of the members, who shall be appointed by the governor, shall be persons who have demonstrated expertise and leadership in areas such as finance, actuarial science, management, business, or public policy.

(b) Three members of the board, who shall be appointed by the governor, shall be persons who have demonstrated expertise and leadership in areas such as business, developmental disabilities service design, management, or public policy, and shall be family members of persons with developmental disabilities.

(c) The seventh member of the board, who shall serve as chair of the board, shall be appointed by the remaining six members of the board.

(2) Members of the board shall serve terms of four years and may be appointed for successive terms of four years at the discretion of the appointing authority. However, the governor may stagger the terms of the initial six members of the board so that approximately one-fourth of the members' terms expire each year.

(3) Members of the board shall be compensated for their service under RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall meet periodically as specified by the call of the chair, or a majority of the board.

(5) Members of the governing board and the state investment board shall not be considered an insurer of the funds or assets of the endowment trust fund or the individual trust accounts. Neither of these two boards or their members shall be liable for the action or inactions of the other.

(6) Members of the governing board and the state investment board are not liable to the state, to the fund, or to any other person as a result of their activities as members, whether ministerial or discretionary, except for willful dishonesty or intentional violations of law. The department and the state investment board respectively, may purchase liability insurance for members.

Sec. 6. RCW 43.330.220 and 1999 c 384 s 5 are each amended to read as follows:

The design, implementation, and administration of the developmental disabilities endowment shall be governed by the following principles:

(1) The design and operation of the endowment should reward families who set aside resources for their child's future care and provide incentives for continued caregiving by the family.

(2) The endowment should encourage financial planning and reward caregiving by a broad range of families, not just those who have substantial financial resources.

(3) Families should not feel compelled to contribute to the endowment in order to meet the needs of continuing care for their child.

(4) All families should have equal access to developmental disabilities services not funded through the endowment regardless of whether they contribute to the endowment.

(5) Services funded through the endowment should be stable, ongoing, of reasonable quality, and respectful of individual and family preferences.

(6) Endowment resources should be expended economically in order to benefit as many families as possible.

(7) Endowment resources should be managed prudently so that families can be confident that their agreement with the endowment on behalf of their child will be honored.

(8) The private financial contribution on behalf of each person receiving services from the endowment shall be at least equal to the state's contribution to the endowment.

(9) In order to be matched with funding from the state's contribution to the endowment, the private contribution on behalf of a beneficiary must be sufficient to support the beneficiary's approved service plan for a significant portion of the beneficiary's anticipated remaining lifetime.

(10) The rate that state appropriations to the endowment are used to match private contributions shall be such that each legislative appropriation to the

developmental disabilities endowment trust fund, including principal and investment income, is not depleted in a period of less than five years.

(11) Private contributions made on behalf of a particular individual, and the associated state match, shall only be used for services provided upon that person's behalf.

(12) State funds contributed to the developmental disabilities endowment trust fund are to support the individual trust accounts established by individual private contributions made by families or other interested persons for named individual beneficiaries.

(13) The governing board shall explore methods to solicit private donations. The governing board shall explore mechanisms to support individuals with developmental disabilities who do not have individual private contributions made on their behalf. The governing board shall establish policies for the use of any private donations.

(14) Types of services funded by money managed through the developmental disabilities endowment trust fund shall be approved by the governing board or its designee.

NEW SECTION. Sec. 7. A new section is added to chapter 43.330 RCW to read as follows:

To the extent funds are appropriated for this purpose, the governing board shall contract with an appropriate organization for the development of a proposed operating plan for the developmental disabilities endowment program. The proposed operating plan shall be consistent with the endowment principles specified in RCW 43.330.220. The plan shall address at least the following elements:

(1) The recommended types of services to be available through the endowment program and their projected average costs per beneficiary;

(2) An assessment of the number of people likely to apply for participation in the endowment under alternative rates of matching funds, minimum service year requirements, and contribution timing approaches;

(3) An actuarial analysis of the number of disabled beneficiaries who are likely to be supported under alternative levels of public contribution to the endowment, and the length of time the beneficiaries are likely to be served, under alternative rates of matching funds, minimum service year requirements, and contribution timing approaches;

(4) Recommended eligibility criteria for participation in the endowment program;

(5) Recommended policies regarding withdrawal of private contributions from the endowment in cases of movement out of state, death of the beneficiary, or other circumstances;

(6) Recommended matching rate of public and private contributions and, for each beneficiary, the maximum annual and lifetime amount of private contributions eligible for public matching funds;

(7) The recommended minimum years of service on behalf of a beneficiary that must be supported by private contributions in order for the contributions to qualify for public matching funds from the endowment;

(8) The recommended schedule according to which lump sum or periodic private contributions should be made to the endowment in order to qualify for public matching funds;

(9) A recommended program for educating families about the endowment, and about planning for their child's long-term future; and

(10) Recommended criteria and procedure for selecting an organization or organizations to administer the developmental disabilities endowment program, and projected administrative costs.

Sec. 8. RCW 43.330.230 and 1999 c 384 s 7 are each amended to read as follows:

Based on the proposed operating plan under section ((6)) 7 of this act, and to the extent funds are appropriated for this purpose, the developmental disabilities endowment governing board shall implement and administer, or contract for the administration of, the developmental disabilities endowment program under the principles specified in RCW 43.330.220. By ((October)) December 1, 2000, and prior to implementation, the final program design shall be submitted to the appropriate committees of the legislature.

The secretary of the department of social and health services shall seek to maximize federal reimbursement and matching funds for expenditures made under the endowment program, and shall seek waivers from federal requirements as necessary for the receipt of federal funds.

The governing board may receive 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 endowment program and may expend the gifts, grants, and endowments according to their terms.

NEW SECTION. Sec. 9. A new section is added to chapter 43.330 RCW to read as follows:

The department of community, trade, and economic development shall adopt rules for the implementation of policies established by the governing board in RCW 43.330.200 through 43.330.230 and sections 4 and 7 of this act. Such rules will be consistent with those statutes and chapter 34.05 RCW.

Passed the Senate February 9, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 121

[Substitute Senate Bill 6502]

LONG-TERM CARE TRAINING

AN ACT Relating to long-term care training; amending RCW 18.20.010, 70.128.005, 70.128.120, 70.128.130, 74.39A.005, and 74.39A.050; adding a new section to chapter 18.20 RCW; adding new sections to chapter 70.128 RCW; and adding new sections to chapter 74.39A RCW.

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

Sec. 1. RCW 18.20.010 and 1985 c 297 s 1 are each amended to read as follows:

The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of boarding homes, which, in the light of advancing knowledge, will promote safe and adequate care of the individuals therein. It is further the intent of the legislature that boarding homes be available to meet the needs of those for whom they care by recognizing the capabilities of individuals to direct their self-medication or to use supervised self-medication techniques when ordered and approved by a physician licensed under chapter 18.57 or 18.71 RCW or a ~~((podiatrist))~~ podiatric physician and surgeon licensed under chapter 18.22 RCW.

The legislature finds that many residents of community-based long-term care facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are often the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and residents' needs increase. The legislature intends that current training standards be enhanced.

NEW SECTION. **Sec. 2.** A new section is added to chapter 18.20 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes any person who provides residents with hands-on personal care on behalf of a boarding home, except volunteers who are directly supervised.

(b) "Direct supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section, is on the premises, and is quickly and easily available to the caregiver.

(2) Training must have the following components: Orientation, basic training, specialty training as appropriate, and continuing education. All boarding home employees or volunteers who routinely interact with residents shall complete orientation. Boarding home administrators, or their designees, and caregivers shall complete orientation, basic training, specialty training as appropriate, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation

must be provided at the facility by appropriate boarding home staff to all boarding home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care or within one hundred twenty days of March 1, 2002, whichever is later. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without direct supervision. Boarding home administrators, or their designees, must complete basic training and demonstrate competency within one hundred twenty days of employment or within one hundred twenty days of March 1, 2002, whichever is later.

(5) For boarding homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of administrators, or designees, and caregivers. Specialty training consists of modules on the core knowledge and skills that caregivers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test. Specialty training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care to a resident having special needs or within one hundred twenty days of March 1, 2002, whichever is later. However, if specialty training is not integrated with basic training, the specialty training must be completed within ninety days of completion of basic training. Until competency in the core specialty areas has been demonstrated, caregivers shall not provide hands-on personal care to residents with special needs without direct supervision. Boarding home administrators, or their designees, must complete specialty training and demonstrate competency within one hundred twenty days of March 1, 2002, if the boarding home serves one or more residents with special needs.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required during the first year following completion of the basic training. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who

successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(10) The community long-term care training and education steering committee established under section 8 of this act shall develop criteria for the approval of orientation, basic training, and specialty training programs.

(11) Boarding homes that desire to deliver facility-based training with facility designated trainers, or boarding homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The community long-term care training and education steering committee shall develop criteria for reviewing and approving trainers and training materials that are substantially similar to or better than the materials developed by the steering committee.

(12) The department shall adopt rules by March 1, 2002, for the implementation of this section based on the recommendations of the community long-term care training and education steering committee established in section 8 of this act.

(13) The orientation, basic training, specialty training, and continuing education requirements of this section take effect March 1, 2002, and shall be applied prospectively. However, nothing in this section affects the current training requirements under RCW 74.39A.010.

NEW SECTION. Sec. 3. A new section is added to chapter 70.128 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete

orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care or within one hundred twenty days of March 1, 2002, whichever is later. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without indirect supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers. Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test. Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required during the first year following completion of the basic training. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The community long-term care training and education steering committee shall develop criteria for reviewing and approving trainers and training materials.

(11) The department shall adopt rules by March 1, 2002, for the implementation of this section based on the recommendations of the community long-term care training and education steering committee established in section 8 of this act.

(12) The orientation, basic training, specialty training, and continuing education requirements of this section take effect March 1, 2002, and shall be applied prospectively. However, nothing in this section affects the current training requirements under RCW 70.128.120 and 70.128.130.

Sec. 4. RCW 70.128.005 and 1995 c 260 s 1 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.

The legislature finds that many residents of community-based long-term care facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are often the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and residents' needs increase. The legislature intends that current training standards be enhanced.

Sec. 5. RCW 70.128.120 and 1996 c 81 s 1 are each amended to read as follows:

Each adult family home provider and each resident manager shall have the following minimum qualifications:

- (1) Twenty-one years of age or older;
- (2) Good moral and responsible character and reputation;
- (3) Literacy;
- (4) Management and administrative ability to carry out the requirements of this chapter;
- (5) Satisfactory completion of department-approved (~~initial~~) basic training and continuing education training as specified by the department in rule, based on recommendations of the community long-term care training and education steering committee and working in collaboration with providers, consumers, caregivers, advocates, family members, educators, and other interested parties in the rule-making process;
- (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) Effective July 1, 1996, registered with the department of health.

Sec. 6. RCW 70.128.130 and 1995 c 260 s 6 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 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~~) must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule.

NEW SECTION. Sec. 7. A new section is added to chapter 70.128 RCW to read as follows:

By March 1, 2002, the department must, by rule, create an approval system for those seeking to conduct department-approved training under section 3 of this act and RCW 70.128.120 (5) and (6) and 70.128.130(10). The department shall adopt rules based on recommendations of the community long-term care training and education steering committee established in section 8 of this act.

NEW SECTION. Sec. 8. A new section is added to chapter 74.39A RCW to read as follows:

(1) The secretary shall appoint a steering committee for community long-term care training and education to advise the department on the development and approval of criteria for training materials, the development of competency tests, the development of criteria for trainers, and the development of exemptions from training. The community long-term care training and education steering committee shall also review the effectiveness of the training program or programs, including the qualifications and availability of the trainers. The steering committee shall also review the appropriateness of the adopted rules implementing this section. The steering committee shall advise the department on flexible and innovative learning strategies that accomplish the training goals, such as competency and outcome-based models and distance learning. The steering committee shall review and recommend the most appropriate length of time between an employee's date of first hire and the start of the employee's basic training.

(2) The steering committee shall, at a minimum, consist of a representative from each of the following: Each of the state-wide boarding home associations, two adult family home associations, each of the state-wide home care associations, the long-term care ombudsman program, the area agencies on aging, the department of health representing the nursing care quality assurance commission, and a consumer, or their nonprovider designee, from a boarding home, adult family

home, home care served by an agency, and home care served by an individual provider. A majority of the members currently serving constitute a quorum.

(3) Nothing in this chapter shall prevent the adult family home advisory committee from enhancing training requirements for adult family providers and resident managers, regulated under chapter 18.48 RCW, at the cost of those providers and resident managers.

(4) Establishment of the steering committee does not prohibit the department from utilizing other advisory activities that the department deems necessary for program development. However, when the department obtains input from other advisory sources, the department shall present the information to the steering committee for review and approval.

(5) Each member of the steering committee shall serve without compensation. Consumer representatives may be reimbursed for travel expenses as authorized in RCW 43.03.060.

(6) The steering committee recommendations must implement the intent of RCW 74.39A.050(14) to create training that includes skills and competencies that are transferable to nursing assistant training.

(7) The steering committee shall cease to exist on July 1, 2004.

Sec. 9. RCW 74.39A.005 and 1993 c 508 s 1 are each amended to read as follows:

The legislature finds that the aging of the population and advanced medical technology have resulted in a growing number of persons who require assistance. The primary resource for long-term care continues to be family and friends. However, these traditional caregivers are increasingly employed outside the home. There is a growing demand for improvement and expansion of home and community-based long-term care services to support and complement the services provided by these informal caregivers.

The legislature further finds that the public interest would best be served by a broad array of long-term care services that support persons who need such services at home or in the community whenever practicable and that promote individual autonomy, dignity, and choice.

The legislature finds that as other long-term care options become more available, the relative need for nursing home beds is likely to decline. The legislature recognizes, however, that nursing home care will continue to be a critical part of the state's long-term care options, and that such services should promote individual dignity, autonomy, and a homelike environment.

The legislature finds that many recipients of in-home services are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are often the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and clients' needs increase. The legislature intends that current training standards be enhanced.

Sec. 10. RCW 74.39A.050 and 1999 c 336 s 5 are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, resident managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.

(8) No provider or staff, or prospective provider or staff, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about personal care aides identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information.

(10) The department shall by rule develop training requirements for individual providers and home care agency providers. Effective March 1, 2002, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section based on the recommendations of the community long-term care training and education steering committee established in section 8 of this act. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

(11) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training. In the rule-making process, the department shall adopt rules based on the recommendations of the community long-term care training and education steering committee established in section 8 of this act.

(13) The department shall establish, by rule, training, background checks, and other quality assurance requirements for personal aides who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers.

~~((+2))~~ (14) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

~~((+3))~~ (15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term

care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.

NEW SECTION. Sec. 11. A new section is added to chapter 74.39A RCW to read as follows:

All training curricula and material, except competency testing material, developed by or for the department and used in part or in whole for the purpose of improving provider and caregiver knowledge and skill are in the public domain unless otherwise protected by copyright law and are subject to disclosure under chapter 42.17 RCW. Any training curricula and material developed by a private entity through a contract with the department are also considered part of the public domain and shall be shared subject to copyright restrictions. Any proprietary curricula and material developed by a private entity for the purposes of training staff in facilities licensed under chapter 18.20 or 70.128 RCW or individual providers and home care agency providers under this chapter and approved for training by the department are not part of the public domain.

Passed the Senate March 6, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 122

[Engrossed Substitute Senate Bill 6217]

PARENTAL RIGHTS

AN ACT Relating to technical and clarifying amendments to the dependency and termination of parental rights statutes; amending RCW 13.34.030, 13.34.040, 13.34.050, 13.34.060, 13.34.070.

13.34.080, 13.34.120, 13.34.145, 13.34.165, 13.34.170, 13.34.174, 13.34.176, 13.34.180, 13.34.190, 13.34.200, 13.34.210, 13.34.231, 13.34.233, 13.34.235, 13.34.260, 13.34.270, 13.34.300, 13.34.340, 13.70.003, 13.70.110, 13.70.140, 26.44.115, and 74.15.030; reenacting and amending RCW 13.34.090, 13.34.110, and 13.34.130; adding new sections to chapter 13.34 RCW; recodifying RCW 13.34.170; and repealing RCW 13.34.162 and 13.34.220.

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

Sec. 1. RCW 13.34.030 and 1999 c 267 s 6 are each amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. 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.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

~~((2))~~ (3) "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: (a) The child returns home((:)); (b) an adoption decree, a permanent custody order, or guardianship order is entered((:)); or (c) the dependency is dismissed, whichever occurs ((soonest)) first. ~~((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))~~ (4) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to ~~((RCW 13.34.232))~~ this chapter for the limited purpose of assisting the court in the supervision of the dependency.

~~((4))~~ (5) "Dependent child" means any child who:

(a) ~~((Who))~~ Has been abandoned; ~~((that is, where the child's parent, guardian, or other custodian has expressed either by statement or conduct, an intent to forego, for an extended period, parental rights or 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; or

(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.

~~((5))~~ (6) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

(7) "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))~~ (8) "Guardian ad litem" means a person, appointed by the court to represent the best interests 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))~~ (9) "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))~~ (10) "Indigent" means a person who, at any stage of a court proceeding,
is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(11) "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))~~ (12) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing services, capable of preventing the need for out-of-home placement while protecting the child. Housing services may include, but are not limited to, referrals to federal, state, local, or private agencies or organizations, assistance with forms and applications, or financial subsidies for housing.

(13) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(14) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services that 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 the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

Sec. 2. RCW 13.34.040 and 1977 ex.s. c 291 s 32 are each amended to read as follows:

(1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and ~~((praying))~~ requesting that the superior court deal with such child as provided in this chapter~~((PROVIDED, That))~~. There shall be no fee for filing such petitions.

(2) In counties having paid probation officers, ~~((such))~~ these officers shall, ~~((as far as))~~ to the extent possible, first determine if ~~((such))~~ a petition is reasonably justifiable. ~~((Such))~~ Each petition shall be verified and ~~((shall))~~ contain a statement

of facts constituting ~~((such))~~ a dependency, ~~((as defined in this chapter,))~~ and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of ~~((such))~~ the alleged dependent child. ~~((There shall be no fee for filing such petitions.))~~

Sec. 3. RCW 13.34.050 and 1998 c 328 s 1 are each amended to read as follows:

(1) The court may enter an order directing a law enforcement officer, probation counselor, or child protective services official to take a child into custody if: (a) A petition is filed with the juvenile court alleging that the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody; (b) an affidavit or declaration is filed by the department in support of the petition setting forth specific factual information evidencing reasonable grounds that the child's health, safety, and welfare will be seriously endangered if not taken into custody and at least one of the grounds set forth demonstrates a risk of imminent harm to the child. "Imminent harm" for purposes of this section shall include, but not be limited to, circumstances of sexual abuse, or sexual exploitation as defined in RCW 26.44.020; and (c) the court finds reasonable grounds to believe the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody.

(2) Any petition that does not have the necessary affidavit or declaration demonstrating a risk of imminent harm requires that the parents are provided notice and an opportunity to be heard ((by the parents)) before the order may be entered.

(3) The petition and supporting documentation must be served on the parent, and ~~((the entity with whom))~~ if the child is in custody at the time the child is removed, on the entity with custody other than the parent. Failure to effect service does not invalidate the petition if service was attempted and the parent could not be found.

Sec. 4. RCW 13.34.060 and 1999 c 17 s 2 are each amended to read as follows:

(1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055. ~~((Shelter care means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to that section.))~~

(a) Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered, priority placement for a child in shelter care shall be with any person described in RCW 74.15.020(2)(a). The person must be willing and available to care for the child and be able to meet any special needs of the child. If a child is not initially placed with a relative pursuant to this section, the supervising agency shall make an effort within available resources to place the child with a relative on the next business day after the child is taken into custody.

The supervising agency shall document its effort to place the child with a relative pursuant to this section. Nothing within this subsection (1)(a) establishes an entitlement to services or a right to a particular placement.

(b) Whenever a child is taken into ~~((such))~~ custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility. No child may be held longer than seventy-two hours, excluding Saturdays, Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have a right to a shelter care hearing. The court shall hold a shelter care hearing within seventy-two hours after the child is taken into custody, excluding Saturdays, Sundays, and holidays. If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, ~~((that))~~ whether such waiver is knowing and voluntary.

(2) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parents, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title as soon as possible and in no event ~~((longer))~~ shall notice be provided more than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody. The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

~~((The written notice of custody and rights shall be in substantially the following form:~~

—————"NOTICE

~~——Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests:~~

~~——1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody. You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.~~

~~——2. You have the right to have a lawyer represent you at the hearing. You have the right to records the department intends to rely upon. A lawyer can look at the~~

~~files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).~~

~~—3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.~~

~~—4. If your hearing occurs before a court commissioner, you have the right to have the decision of the court commissioner reviewed by a superior court judge. To obtain that review, you must, within ten days after the entry of the decision of the court commissioner, file with the court a motion for revision of the decision, as provided in RCW 2.24.050.~~

~~—You should be present at this hearing. If you do not come, the judge will not hear what you have to say.~~

~~—You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number)."~~

~~—Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.~~

~~—If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.~~

~~—(3) If child protective services is not required to give notice under subsection (2) of this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.~~

~~—(4) Reasonable efforts to advise and to give notice, as required in subsections (2) and (3) of this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the juvenile court counselor or caseworker shall testify at the hearing or state in a declaration:~~

~~—(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or legal custodian; and~~

~~—(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used.~~

~~— (5) At the commencement of the shelter care hearing the court shall advise the parties of their basic rights as provided in RCW 13.34.090 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not been retained by the parent or guardian and if the parent or guardian is indigent, unless the court finds that the right to counsel has been expressly and voluntarily waived in court.~~

~~— (6) The court shall hear evidence regarding notice given to, and efforts to notify, the parent, guardian, or legal custodian and shall examine the need for shelter care. The court shall hear evidence regarding the efforts made to place the child with a relative. The court shall make an express finding as to whether the notice required under subsections (2) and (3) of this section was given to the parent, guardian, or legal custodian. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care. Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.~~

~~— (7) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care, except that such recommendation shall be submitted by the department of social and health services in cases where the petition alleging dependency has been filed by the department of social and health services, unless otherwise ordered by the court.~~

~~— (8) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:~~

~~— (a) After consideration of the specific services that have been provided, 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~~

~~— (b)(i) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or~~

~~— (ii) The release of such child would present a serious threat of substantial harm to such child; or~~

~~— (iii) The parent, guardian, or custodian to whom the child could be released is alleged to have violated RCW 9A.40.060 or 9A.40.070.~~

~~— If the court does not release the child to his or her parent, guardian, or legal custodian, and the child was initially placed with a relative pursuant to subsection (1) of this section, the court shall order continued placement with a relative, unless there is reasonable cause to believe the safety or welfare of the child would be jeopardized. If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to subsection (1) of this section. If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. The court shall enter a finding as to~~

~~whether subsections (2) and (3) of this section have been complied with. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090.~~

~~—(9) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.~~

~~—The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent and give weight to that fact before ordering return of the child to shelter care.~~

~~—(10) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be detained for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.~~

~~—(11) Any parent, guardian, or legal custodian who for good cause is unable to attend the initial shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. The hearing shall be held within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means:))~~

NEW SECTION. **Sec. 5.** A new section is added to chapter 13.34 RCW to read as follows:

(1) The written notice of custody and rights required by RCW 13.34.060 shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody excluding Saturdays, Sundays, and holidays. You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot

afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

4. If your hearing occurs before a court commissioner, you have the right to have the decision of the court commissioner reviewed by a superior court judge. To obtain that review, you must, within ten days after the entry of the decision of the court commissioner, file with the court a motion for revision of the decision, as provided in RCW 2.24.050.

You should be present at any shelter care hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number)."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(2) If child protective services is not required to give notice under RCW 13.34.060(2) and subsection (1) of this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(3) Reasonable efforts to advise and to give notice, as required in RCW 13.34.060(2) and subsections (1) and (2) of this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the petitioner shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or legal custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used.

(4) The court shall hear evidence regarding notice given to, and efforts to notify, the parent, guardian, or legal custodian and shall examine the need for

shelter care. The court shall hear evidence regarding the efforts made to place the child with a relative. The court shall make an express finding as to whether the notice required under RCW 13.34.060(2) and subsections (1) and (2) of this section was given to the parent, guardian, or legal custodian. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care. Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(5) A shelter care order issued pursuant to section 7 of this act may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(6) Any parent, guardian, or legal custodian who for good cause is unable to attend the initial shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

NEW SECTION. Sec. 6. A new section is added to chapter 13.34 RCW to read as follows:

At the commencement of the shelter care hearing the court shall advise the parties of basic rights as provided in RCW 13.34.090 and appoint counsel pursuant to RCW 13.34.090 if the parent or guardian is indigent unless counsel has been retained by the parent or guardian or the court finds that the right to counsel has been expressly and voluntarily waived in court.

NEW SECTION. Sec. 7. A new section is added to chapter 13.34 RCW to read as follows:

(1) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care unless the petition has been filed by the department, in which case the recommendation shall be submitted by the department.

(2) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(a) After consideration of the specific services that have been provided, 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

(b)(i) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(ii) The release of such child would present a serious threat of substantial harm to such child; or

(iii) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

If the court does not release the child to his or her parent, guardian, or legal custodian, and the child was initially placed with a relative pursuant to RCW 13.34.060(1), the court shall order continued placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized. If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1). If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. The court shall enter a finding as to whether RCW 13.34.060(2) and subsections (1) and (2) of this section have been complied with. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090.

(3) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent and give weight to that fact before ordering return of the child to shelter care.

Sec. 8. RCW 13.34.070 and 1993 c 358 s 1 are each amended to read as follows:

(1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. ~~((Where))~~ When the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional

circumstances ~~((de))~~ exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or ~~((her))~~ her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him or her to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he or she may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:
VIOLATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy ~~((thereof))~~ by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy ~~((thereof))~~ to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department ~~((of social and health services social worker))~~ employee.

(10) In any proceeding brought under this chapter where the court knows or has reason to know that the child involved is a member or is eligible to be a member of an Indian tribe, notice of the pendency of the proceeding shall also be sent by registered mail, return receipt requested, to the child's tribe. If the identity or location of the tribe cannot be determined, such notice shall be transmitted to the secretary of the interior of the United States.

Sec. 9. RCW 13.34.080 and 1990 c 246 s 3 are each amended to read as follows:

~~((In a dependency case where it appears by the petition or verified statement, that the person standing in the position of natural or legal guardian of the person of any child, is a nonresident of this state, or that the name or place of residence or whereabouts of such person is unknown, as well as in all cases where, after due diligence, the officer has been unable to make service of the summons or notice provided for in RCW 13.34.070, and a copy of the notice has been deposited in the post office, postage prepaid, directed to such person at his last known place of residence;))~~ (1) The court shall direct the clerk to publish notice in a legal newspaper printed in the county, qualified to publish summons, once a week for three consecutive weeks, with the first publication of the notice to be at least twenty-five days prior to the date fixed for the hearing when it appears by the petition or verified statement that:

(a)(i) The parent or guardian is a nonresident of this state; or

(ii) The name or place of residence or whereabouts of the parent or guardian is unknown; and

(b) After due diligence, the person attempting service of the summons or notice provided for in RCW 13.34.070 has been unable to make service, and a copy of the notice has been deposited in the post office, postage prepaid, directed to such person at his or her last known place of residence. If the parent, guardian, or legal custodian is believed to be a resident of another state or a county other than the county in which the petition has been filed, notice also shall be published in the county in which the parent, guardian, or legal custodian is believed to reside.

~~((Additionally;))~~ (2) Publication may proceed simultaneously with efforts to provide ~~((personal))~~ service in person or ~~((service))~~ by mail ~~((for good cause shown))~~, when the court determines there is reason to believe that ~~((personal))~~ service in person or ~~((service))~~ by mail will not be successful. ~~((Such))~~ Notice shall be directed to the parent, parents, or other person claiming the right to the custody of the child, if their names are known~~((or))~~. If their names are unknown, the phrase "To whom it may concern" shall be used ~~((and))~~, apply to, and be binding upon, ~~((any such))~~ those persons whose names are unknown. The name of the court, the name of the child (or children if of one family), the date of the

filing of the petition, the date of hearing, and the object of the proceeding in general terms shall be set forth(~~, and the whole shall be subscribed by the clerk~~). There shall be filed with the clerk an affidavit showing due publication of the notice(~~, and~~). The cost of publication shall be paid by the county at a rate not ((to exceed)) greater than the rate paid ((by the county)) for other legal notices. The publication of notice shall be deemed equivalent to personal service upon all persons, known or unknown, who have been designated as provided in this section.

Sec. 10. RCW 13.34.090 and 1998 c 328 s 3 and 1998 c 141 s 1 are each reenacted and amended to read as follows:

(1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact-finder.

(2) At all stages of a proceeding in which a child is alleged to be dependent (~~(as defined in RCW 13.34.030(4))~~), the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency (~~(as defined in chapter 10.101 RCW)~~).

(3) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

(4) Copies of department of social and health services or supervising agency records to which parents have legal access pursuant to chapter 13.50 RCW shall be given to the child's parent, guardian, legal custodian, or his or her legal counsel, prior to any shelter care hearing and within fifteen days after the department or supervising agency receives a written request for such records from the parent, guardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel a reasonable period of time prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the parents, guardian, legal custodian, or his or her counsel. When the records are served on legal counsel, legal counsel shall have the opportunity to review the records with the parents and shall review the records with the parents prior to the shelter care hearing.

Sec. 11. RCW 13.34.110 and 1995 c 313 s 1 and 1995 c 311 s 27 are each reenacted and 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)). Immediately after the entry of the findings of fact, the court shall hold a disposition hearing, unless there is good cause for continuing the matter for up to fourteen days. If good cause is shown, the case may be continued for longer than fourteen days. 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 certified mail of the time and place of any continued hearing. Unless there is reasonable cause to believe the health, 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. Reasonable cause to dispense with notification to a parent under this section must be proved by clear, cogent, and convincing evidence.~~

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, the child's foster parent, to attend 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.)~~

NEW SECTION. Sec. 12. A new section is added to chapter 13.34 RCW to read as follows:

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 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, the child's foster parent, to attend 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. 13. RCW 13.34.120 and 1998 c 328 s 4 are each amended to read as follows:

~~((1))~~ To aid the court in its decision on disposition, a social study~~((; consisting of a written evaluation of matters relevant to the disposition of the case;))~~ shall be made by the person or agency filing the petition. A parent may submit a counselor's or health care provider's evaluation of the parent, which shall either be included in the social study or considered in conjunction with the social study. The study shall include all social ~~((records))~~ files and may also include facts relating to the child's cultural heritage, and shall be made available to the court. The court shall consider the social file, social study, guardian ad litem report, the court-appointed special advocate's report, if any, and any reports filed by a party at the disposition hearing in addition to evidence produced at the fact-finding hearing. At least ten working days before the disposition hearing, the department shall mail to the parent and his or her attorney a copy of the agency's social study and proposed service plan, which shall be in writing or in a form understandable to the parents or custodians. In addition, the department shall provide an opportunity for parents to review and comment on the plan at the ~~((community service))~~ local office closest to the parents' residence. If the parents disagree with the agency's plan or any part thereof, the parents shall submit to the court at least twenty-four hours before the hearing, in writing, or signed oral statement, an alternative plan to correct the problems which led to the finding of dependency. This section shall not interfere with the right of the parents or custodians to submit oral arguments regarding the disposition plan at the hearing.

~~((2))~~ In addition to the requirements set forth in subsection (1) of this section, a predisposition study to the court in cases of dependency alleged pursuant to RCW 13.34.030(4) (b) or (c) shall contain the following information:

~~— (a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;~~

~~— (b) A description of the specific programs, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such programs are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify services chosen and approved by the parent;~~

~~— (c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs which have been considered and rejected; the preventive~~

~~services that 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 the parents' attitude toward placement of the child;~~

~~—(d) A statement of the likely harms the child will suffer as a result of removal. This section should include an exploration of the nature of the parent-child attachment and the meaning of separation and loss to both the parents and the child;~~

~~—(e) A description of the steps that will be taken to minimize harm to the child that may result if separation occurs; and~~

~~—(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.))~~

NEW SECTION. Sec. 14. A new section is added to chapter 13.34 RCW to read as follows:

If the most recent date that a child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care occurred prior to the filing of a dependency petition or after filing but prior to entry of a disposition order, such time periods shall be included when calculating the length of the child's current placement episode.

Sec. 15. RCW 13.34.130 and 1999 c 267 s 16, 1999 c 267 s 9, and 1999 c 173 s 3 are each reenacted and 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)) social study 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)) determining the disposition, the court should choose those services, including housing assistance, that least interfere with family autonomy((, provided that the services)) and are adequate to protect the child.

(b) Order ((that)) the child to 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 health, 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 person who is: (i) Related to the child as defined in

RCW 74.15.020(2)(a) ~~((and))~~ with whom the child has a relationship and is comfortable~~(:);~~; and ~~((who is))~~ (ii) willing and available to care for the child.

(2) 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))~~ (a) There is no parent or guardian available to care for such child;

~~((ii))~~ (b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

~~((iii))~~ (c) The court finds, by clear, cogent, and convincing evidence, 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))~~ (3) 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:~~ ~~(a) Termination is recommended by the supervising agency;~~ ~~(b) termination is in the best interests of the child;~~ and ~~(c) that because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required.~~ Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interest of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following:

~~—(i) 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;~~

~~—(ii) 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;~~

~~—(iii) 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;~~

~~—(iv) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;~~

- ~~—(v) Conviction of the parent of attempting, soliciting, or conspiracy to commit a crime listed in (c)(i), (ii), (iii), or (iv) of this subsection;~~
- ~~—(vi) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;~~
- ~~—(vii) 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. In the case of a parent of an Indian child, as defined in the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903), the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;~~
- ~~—(viii) An infant under three years of age has been abandoned as defined in RCW 13.34.030(4)(a);~~
- ~~—(ix) The mother has given birth to three or more drug-affected infants, resulting in the department filing a petition under section 23, chapter 314, Laws of 1998;~~
- ~~—(x) Conviction of the parent of a sex offense under chapter 9A.44 RCW or incest under RCW 9A.64.020 when the child is born of the offense.~~
- ~~—(3) If reasonable efforts are not ordered under subsection (2) of this section a permanency planning hearing shall be held within thirty days. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.~~
- ~~—(4) 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; permanent legal custody; 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; or a responsible living skills program. 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 permanency 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.~~

~~—(e) 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.~~

~~—(5) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.~~

~~—(6)) requirements of section 16 of this act are met.~~

(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.

~~((7) 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. The supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard.~~

~~—(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, including housing assistance, 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 to a 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.~~

~~— (8) The court's ability to order housing assistance under this section is: (a) Limited to cases in which homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement; and (b) subject to the availability of funds appropriated for this specific purpose.)~~

NEW SECTION. Sec. 16. A new section is added to chapter 13.34 RCW to read as follows:

A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

(1) The court has removed the child from his or her home pursuant to RCW 13.34.130;

(2) Termination is recommended by the supervising agency;

(3) Termination is in the best interests of the child; and

(4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, 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) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;

(f) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(g) 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. In the case of a parent of an Indian child, as defined in the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903), the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

- (h) An infant under three years of age has been abandoned;
- (i) Conviction of the parent, when a child has been born of the offense, of:
(A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020.

NEW SECTION. Sec. 17. A new section is added to chapter 13.34 RCW to read as follows:

If reasonable efforts are not ordered under section 16 of this act, a permanency planning hearing shall be held within thirty days of the court order to file a petition to terminate parental rights. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

NEW SECTION. Sec. 18. A new section is added to chapter 13.34 RCW to read as follows:

(1) 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; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. 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 RCW 13.34.130(3), 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 to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall 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 has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(3), 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 if the court orders a termination petition be filed.

(2) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

NEW SECTION. **Sec. 19.** A new section is added to chapter 13.34 RCW to read as follows:

(1) 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. The supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard.

(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 RCW 13.34.130 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, including housing assistance, 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.

(2) The court's ability to order housing assistance under RCW 13.34.130 and this section is: (a) Limited to cases in which homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement; and (b) subject to the availability of funds appropriated for this specific purpose.

Sec. 20. RCW 13.34.145 and 1999 c 267 s 17 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; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; a responsible living skills program; 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. 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.

(d) For purposes related to permanency planning:

(i) "Guardianship" means a dependency guardianship (~~pursuant to this chapter~~), a legal guardianship pursuant to chapter 11.88 RCW, or equivalent laws of another state or a federally recognized Indian tribe.

(ii) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(iii) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or of a federally recognized Indian tribe.

(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 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, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(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 months, as provided in subsection (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, guardianship order, or a permanent custody order is entered, or the dependency is dismissed.

(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.

(6) At the permanency planning hearing, the court shall enter findings as required by (~~RCW 13.34.130(7)~~) section 19 of this act 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 and ~~((13.34.130(7)))~~ section 19 of this act. 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.

(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(7)))~~ section 19 of this act, and the court shall determine the need for continued intervention.

(8) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when~~((:));~~ (a) The court has ordered implementation of a permanency plan that includes legal guardianship or permanent legal custody~~((:));~~; and (b) the party pursuing the legal guardianship or permanent legal custody is the party identified in the permanency plan as the prospective legal guardian or custodian. During the pendency of such proceeding, ~~((juvenile))~~ the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) 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.

(10) 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(7)))~~ section 19 of this act, 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.

(11) 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.

(12) 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.

(13) 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 13.34.165 and 1998 c 296 s 38 are each amended to read as follows:

(1) Failure by a party to comply with an order entered under this chapter is civil contempt of court as provided in RCW 7.21.030(2)(e).

(2) The maximum term of ~~((imprisonment))~~ confinement that may be imposed as a remedial sanction for contempt of court under this section is confinement for up to seven days.

(3) A child ~~((imprisoned))~~ held for contempt under this section shall be confined only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(4) A motion for contempt may be made by a parent, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order entered pursuant to this chapter.

(5) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065.

Sec. 22. RCW 13.34.170 and 1981 c 195 s 9 are each amended to read as follows:

In any case in which ~~((an order or decree of))~~ the ~~((juvenile))~~ court ~~((requiring))~~ has ordered a parent or parents, guardian, or other person having custody of a child to pay ~~((for shelter care and/or))~~ support ~~((of such child is))~~ under RCW 13.34.160 and the order has not been complied with, the court may, upon such person or persons being duly summoned or voluntarily appearing, proceed to inquire into the amount due upon ~~((said))~~ the order ~~((or decree))~~ and enter judgment for ~~((such))~~ that amount against the defaulting party or parties, and

~~((such))~~ the judgment shall be docketed as are other judgments for the payment of money.

In such judgments, the county in which the ~~((same are))~~ order is entered shall be ~~((denominated))~~ the judgment creditor, or the state may be the judgment creditor where the child is in the custody of a state agency ~~((and said))~~. Judgments may be enforced by the prosecuting attorney of ~~((such))~~ the county, or the attorney general where the state is the judgment creditor and any moneys recovered ~~((thereon))~~ shall be paid into the registry of the juvenile court and shall be disbursed to such person, persons, agency, or governmental department as the court ~~((shall find to be))~~ finds is entitled ~~((thereto))~~ to it.

Such judgments shall remain ~~((as))~~ valid and enforceable ~~((judgments))~~ for a period of ten years ~~((subsequent to the))~~ after the date of entry ~~((thereof))~~.

Sec. 23. RCW 13.34.174 and 1993 c 412 s 5 are each amended to read as follows:

(1) The provisions of this section shall apply when a court orders a party to undergo an alcohol or substance abuse diagnostic investigation and evaluation.

(2) The facility conducting the investigation and evaluation shall make a written report to the court stating its findings and recommendations including family-based services or treatment when appropriate. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

- (a) Type of treatment;
- (b) Nature of treatment;
- (c) Length of treatment;
- (d) A treatment time schedule; and
- (e) Approximate cost of the treatment.

The affected person shall be included in developing the appropriate ~~((plan of))~~ treatment plan. The ~~((plan of))~~ treatment plan must be signed by ~~((the))~~ the treatment provider and the affected person. The initial written progress report based on the treatment plan ~~((and response to treatment))~~ shall be sent to the appropriate persons six weeks after initiation of treatment~~((, and))~~. Subsequent progress reports shall be provided after three months, ~~((after))~~ six months, ~~((after))~~ twelve months, and thereafter every six months if treatment exceeds twelve months. Reports are to be filed with the court in a timely manner. Close-out of the treatment record must include summary of pretreatment and posttreatment, with final outcome and disposition. The report shall also include recommendations for ongoing stability and decrease in destructive behavior.

~~((The))~~ Each report ~~((with the treatment plan))~~ shall also be filed with the court and a copy given to the person evaluated and the person's counsel. A copy of the treatment plan shall also be given to the department's caseworker and to the guardian ad litem. Any program for chemical dependency shall meet the program requirements contained in chapter 70.96A RCW.

(3) If the court has ordered treatment pursuant to a dependency proceeding it shall also require the treatment program to provide, in the reports required by subsection (2) of this section, status reports to the court, the department, the supervising child-placing agency if any, and the person or person's counsel regarding ~~((+-(a)))~~ the person's cooperation with the treatment plan proposed ~~((+))~~ and ~~((+b))~~ the person's progress in treatment.

(4) ~~((In addition;))~~ If ~~((the party))~~ a person subject to this section fails or neglects to carry out and fulfill any term or condition of the treatment plan, the program or agency administering the treatment shall report such breach to the court, the department, the guardian ad litem, the supervising child-placing agency if any, and the person or person's counsel, within twenty-four hours, together with its recommendation. These reports shall be made as a declaration by the person who is personally responsible for providing the treatment.

(5) Nothing in this chapter may be construed as allowing the court to require the department to pay for the cost of any alcohol or substance abuse evaluation or treatment program.

Sec. 24. RCW 13.34.176 and 1993 c 412 s 6 are each amended to read as follows:

(1) The court ~~((or the department))~~, upon receiving a report under RCW 13.34.174(4) or at the department's request, may schedule a show cause hearing to determine whether the person is in violation of the treatment conditions. All parties shall be given notice of the hearing. The court shall hold the hearing within ten days of the request for a hearing. At the hearing, testimony, declarations, reports, or other relevant information may be presented on the person's alleged failure to comply with the treatment plan and the person shall have the right to present similar information on his or her own behalf.

(2) If the court finds that there has been a violation of the treatment conditions it shall modify the dependency order, as necessary, to ensure the safety of the child. The modified order shall remain in effect until the party is in full compliance with the treatment requirements.

Sec. 25. RCW 13.34.180 and 1998 c 314 s 4 are each amended to read as follows:

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

~~((+))~~ (a) That the child has been found to be a dependent child ~~((under RCW 13.34.030(4)))~~; ~~((and~~
~~—(2))~~ (b) That the court has entered a dispositional order pursuant to RCW 13.34.130; ~~((and~~

~~(3))~~ (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency (~~(under RCW 13.34.030(4))~~); ~~(and~~
~~(4))~~ (d) That the services ordered under (~~RCW 13.34.130~~) section 18 of this act have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided; ~~(and~~

~~(5))~~ (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

~~((#))~~ (i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

~~((#))~~ (ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and

~~((6))~~ (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home(~~(+or)~~).

~~((7))~~ (2) In lieu of the allegations in subsection(~~(s)~~) (1) (~~(through (6))~~) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found(~~(+or)~~).

~~((8))~~ (3) In lieu of the allegations in subsection(~~(s (2) through (6))~~) (1)(b) through (f) of this section, the petition may allege that the parent has been (~~(found by a court of competent jurisdiction)~~) convicted of:

(a) (~~(To have committed, against another child of such parent,))~~ Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) ~~((To have committed, against another child of such parent,))~~ Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;

(c) ~~((To have attempted, conspired, or solicited))~~ Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) ~~((To have committed))~~ Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

Sec. 26. RCW 13.34.190 and 1998 c 314 s 5 are each amended to read as follows:

After hearings pursuant to RCW 13.34.110 ~~or 13.34.130~~, the court may enter an order terminating all parental rights to a child only if the court finds that:

(1)(a) The allegations contained in the petition as provided in RCW 13.34.180(1) ~~((through (6)))~~ are established by clear, cogent, and convincing evidence; or

(b) ~~((RCW 13.34.180 (3) and (4) may be waived because the allegations under))~~ The provisions of RCW 13.34.180 (1)((, (2), (5), and (6))) (a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1) (c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

(c) The allegation under RCW 13.34.180(~~((7))~~) (2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180 (~~((5) and (6))~~) (1) (e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in (~~(RCW 13.34.130(2))~~) section 16 of this act exist; or

(d) The allegation under RCW 13.34.180(~~((8))~~) (3) is established beyond a reasonable doubt; and

(2) Such an order is in the best interests of the child.

Sec. 27. RCW 13.34.200 and 1977 ex.s. c 291 s 48 are each amended to read as follows:

(1) Upon the termination of parental rights pursuant to RCW 13.34.180, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceedings concerning the child: PROVIDED, That any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent and the order shall so state.

(2) An order terminating the parent and child relationship shall not disentitle a child to any benefit due the child from any third person, agency, state, or the United States, nor shall any action under this chapter be deemed to affect any rights and benefits that (~~(a native American))~~ an Indian child derives from the child's descent from a member of a federally recognized Indian tribe.

Sec. 28. RCW 13.34.210 and 1991 c 127 s 6 are each amended to read as follows:

If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department (~~(of social and health services))~~ or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption(~~(, or in the absence thereof)~~). If an adoptive home has not been identified, the department or agency shall place the child in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a (~~(general guardian))~~ guardianship of the child under RCW 13.34.231 or chapter 11.88 RCW, or a permanent custody order under chapter 26.10 RCW, has not been (~~(appointed))~~ entered by the court, (~~(the child shall be returned to the court for entry of further orders for his or her care, custody, and control, and~~

~~except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW;~~) the court shall review the case every six months ~~((thereafter))~~ until a decree of adoption is entered except for those cases which are reviewed by a citizen review board under chapter 13.70 RCW.

Sec. 29. RCW 13.34.231 and 1994 c 288 s 6 are each amended to read as follows:

At the hearing on a dependency guardianship petition, all parties have the right to present evidence and cross examine witnesses. The rules of evidence apply to the conduct of the hearing. A guardianship shall be established if the court finds by a preponderance of the evidence that:

- (1) The child has been found to be a dependent child under RCW 13.34.030;
- (2) A dispositional order has been entered pursuant to RCW 13.34.130;
- (3) The child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030;
- (4) The services ordered under RCW 13.34.130 and section 18 of this act have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided;
- (5) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and
- (6) A guardianship, rather than termination of the parent-child relationship or continuation of efforts to return the child to the custody of the parent, would be in the best interest of the child.

Sec. 30. RCW 13.34.233 and 1995 c 311 s 24 are each amended to read as follows:

(1) Any party may request the court under RCW 13.34.150 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 shall 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: (a) Initiate a proceeding to modify or terminate a guardianship; and ((the right to)) (b) 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. 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))~~ reasons for removal as set forth in RCW 13.34.130 no longer exist~~((s))~~ 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)))~~ section 19 of this act and, where applicable, shall hold a permanency planning hearing in accordance with RCW 13.34.145.

Sec. 31. RCW 13.34.235 and 1981 c 195 s 6 are each amended to read as follows:

A dependency guardianship (~~(established under RCW 13.34.231 and 13.34.232)~~) is not subject to the review hearing requirements of ~~((RCW 13.34.130))~~ section 19 of this act unless ordered by the court under RCW 13.34.232(1)(e).

Sec. 32. RCW 13.34.260 and 1990 c 284 s 25 are each amended to read as follows:

In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child. Preferences such as family constellation, ethnicity, and religion shall be ~~((given consideration))~~ considered when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and ~~((should))~~ shall be integrated through the foster care team. For purposes of this section, "foster care team" means the foster parent currently providing care, the currently assigned social worker, and the parent or parents.

Sec. 33. RCW 13.34.270 and 1998 c 229 s 2 are each amended to read as follows:

(1) Whenever the department (~~(of social and health services)~~) places a ~~((developmentally disabled))~~ child with a developmental disability in out-of-home care pursuant to RCW 74.13.350, the department shall obtain a judicial determination within one hundred eighty days of the placement that continued placement is in the best interests of the child. If the child's out-of-home placement

ends before one hundred eighty days have elapsed, no judicial determination is required.

(2) To obtain the judicial determination, the department shall file a petition alleging that there is located or residing within the county a child who has a developmental disability(~~(, as defined in RCW 71A.10.020,)~~) and that the child has been placed in out-of-home care pursuant to RCW 74.13.350. The petition shall request that the court review the child's placement, make a determination (~~(that)~~) whether continued placement is in the best interests of the child, and take other necessary action as provided in this section. The petition shall contain the name, date of birth, and residence of the child and the names and residences of the child's parent or legal guardian who has agreed to the child's placement in out-of-home care. Reasonable attempts shall be made by the department to ascertain and set forth in the petition the identity, location, and custodial status of any parent who is not a party to the placement agreement and why that parent cannot assume custody of the child.

(3) Upon filing of the petition, the clerk of the court shall schedule the petition for a hearing to be held no later than fourteen calendar days after the petition has been filed. The department shall provide notification of the time, date, and purpose of the hearing to the parent or legal guardian who has agreed to the child's placement in out-of-home care. The department shall also make reasonable attempts to notify any parent who is not a party to the placement agreement, if the parent's identity and location is known. Notification under this section may be given by the most expedient means, including but not limited to, mail, personal service, and telephone(~~(, and telegraph)~~).

(4) The court shall appoint a guardian ad litem for the child as provided in RCW 13.34.100, unless the court for good cause finds the appointment unnecessary.

(5) Permanency planning hearings shall be held as provided in this ~~((subsection))~~ section. At the hearing, the court shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

(a) For children age 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 under chapter 11.88 RCW has not previously been entered. The hearing shall take place no later than twelve months following commencement of the child's current placement episode.

(b) For children over age 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 under chapter 11.88 RCW has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.

(c) No later than ten working days before the permanency planning hearing, the department shall submit a written permanency plan to the court and shall mail

a copy of the plan to all parties. The plan shall be directed toward 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 or legal guardian; adoption; guardianship; or long-term out-of-home care, until the child is age eighteen, with a written agreement between the parties and the child's care provider.

(d) If a goal of long-term out-of-home care has been achieved before 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 remains appropriate. In cases where the primary permanency planning goal has not 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.

(e) 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 voluntary placement agreement is terminated.

(6) Any party to the voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian, unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The department shall notify the court upon termination of the voluntary placement agreement and return of the child to the care of the child's parent or legal guardian. Whenever a voluntary placement agreement is terminated, an action under this section shall be dismissed.

(7) This section does not prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030. An action filed under this section shall be dismissed upon the filing of a dependency petition regarding a child who is the subject of the action under this section.

Sec. 34. RCW 13.34.300 and 1979 ex.s. c 201 s 3 are each amended to read as follows:

The legislature finds that it is the responsibility of the custodial parent, parents or guardian to ensure that children within the custody of such individuals attend school as provided for by law. To this end, while a parent's failure to cause a juvenile to attend school should not alone provide a basis for a neglect petition against the parent or guardian, when a neglect petition is filed on the basis of other evidence, a parent or guardian's failure to take reasonable steps to ensure that the juvenile attends school may be ~~((used as evidence with respect))~~ relevant to the question of the appropriate disposition of a neglect petition.

Sec. 35. RCW 13.34.340 and 1999 c 188 s 4 are each amended to read as follows:

For minors who cannot consent to the release of their records with the department because they are not old enough to consent to treatment, or, if old enough, lack the capacity to consent, or if the minor is receiving treatment involuntarily with a provider the department has authorized to provide mental health treatment under RCW 13.34.320, the department shall disclose, upon the treating physician's request, all relevant records, including the minor's passport as established under RCW 74.13.285, in the department's possession that the treating physician determines contain information required for treatment of the minor. The treating physician shall maintain all records received from the department in a manner that distinguishes the records from any other records in the minor's file with the treating physician and the department records may not be disclosed by the treating physician to any other person or entity absent a court order except that, for medical purposes only, a treating physician may disclose the department records to another treating physician.

Sec. 36. RCW 13.70.003 and 1989 1st ex.s. c 17 s 1 are each amended to read as follows:

The legislature recognizes the importance of permanency and continuity to children and of fairness to parents in the provision of child welfare services.

The legislature intends to create a citizen review board system that will function in an advisory capacity to the judiciary, the department, and the legislature. The purpose of the citizen review board system is to:

- (1) Provide periodic review of cases involving substitute care of children in a manner that complies with case review requirements and time lines imposed by federal laws pertaining to child welfare services;
- (2) Improve the quality of case review provided to children in substitute care and their families; and
- (3) Provide a means for community involvement in monitoring cases of children in substitute care.

In order to accomplish the foregoing purposes, the citizen review board system shall not be subject to the procedures and standards usually applicable to judicial and administrative hearings, except as otherwise specifically provided in this chapter and ~~((RCW 13.34.130))~~ section 19 of this act, 13.34.145, and 26.44.115. Nothing in this chapter and ~~((RCW 13.34.130))~~ section 19 of this act, 13.34.145, and 26.44.115 shall limit the ability of the department to utilize court review hearings and administrative reviews to meet the periodic review requirements imposed by federal law.

Sec. 37. RCW 13.70.110 and 1991 c 127 s 5 are each amended to read as follows:

- (1) This section shall apply to cases where a child has been placed in substitute care pursuant to a proceeding under chapter 13.34 RCW.

(2) Within forty-five days following commencement of the placement episode, the court shall assign the child's case to a board and forward to the board a copy of the dependency petition and any shelter care or dependency disposition orders which have been entered in the case by the court.

(3) The board shall review the case plan for each child whose case is assigned to the board by the court. The review shall take place at times set by the board. The first review shall occur within ninety days following commencement of the placement episode. The second review shall occur within six months following commencement of the placement episode. The next review shall occur within one year after commencement of the placement episode. Within ~~((eighteen))~~ twelve months following commencement of the placement episode, a permanency planning hearing shall be held before the court in accordance with RCW 13.34.145. Thereafter, the court shall assign the child's case for a board review or a court review hearing pursuant to ~~((RCW 13.34.130(5)))~~ section 17 of this act. A board review or a court review hearing shall take place at least once every six months until the child is no longer within the jurisdiction of the court or no longer in substitute care or until a guardianship order or adoption decree is entered. After the permanency planning hearing, a court review hearing must occur at least once a year as provided in ~~((RCW 13.34.130))~~ section 19 of this act. The board shall review any case where a petition to terminate parental rights has been denied, and such review shall occur as soon as practical but no later than forty-five days after the denial.

(4) The board shall prepare written findings and recommendations with respect to:

(a) Whether reasonable efforts were made before the placement to prevent or eliminate the need for removal of the child from the home, including whether consideration was given to removing the alleged offender, rather than the child, from the home;

(b) Whether reasonable efforts have been made subsequent to the placement to make it possible for the child to be returned home;

(c) 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;

(d) Whether there is a continuing need for placement and whether the placement is appropriate;

(e) Whether there has been compliance with the case plan;

(f) Whether progress has been made toward alleviating the need for placement;

(g) A likely date by which the child may be returned home or other permanent plan of care may be implemented; and

(h) Other problems, solutions, or alternatives the board determines should be explored.

(5) Within ten working days following the review, the board shall send a copy of its findings and recommendations to the parents and their attorneys, the child's

custodians and their attorneys, mature children and their attorneys, other attorneys or guardians ad litem appointed by the court to represent children, the department and other child placement agencies directly responsible for supervising the child's placement, and any prosecuting attorney or attorney general actively involved in the case. If the child is an Indian as defined in the Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., a copy of the board's findings and recommendations shall also be sent to the child's Indian tribe.

(6) If the department is unable or unwilling to implement the board recommendations, the department shall submit to the board, within ten working days after receipt of the findings and recommendations, an implementation report setting forth the reasons why the department is unable or unwilling to implement the board's recommendations. The report will also set forth the case plan which the department intends to implement.

(7) Within forty-five days following the review, the board shall either:

(a) Schedule the case for further review by the board; or

(b) Submit to the court the board's findings and recommendations and the department's implementation reports, if any. If the board's recommendations are different from the existing court-ordered case plan, the board shall also file with the court a motion for a review hearing.

(8) Within ten days of receipt of the board's written findings and recommendations and the department's implementation report, if any, the court shall review the findings and recommendations and implementation reports, if any. The court may on its own motion schedule a review hearing.

(9) Unless modified by subsequent court order, the court-ordered case plan and court orders that are in effect at the time that a board reviews a case shall remain in full force and effect. Board findings and recommendations are advisory only and do not in any way modify existing court orders or court-ordered case plans.

(10) The findings and recommendations of the board and the department's implementation report, if any, shall become part of the department's case file and the court social file pertaining to the child.

(11) Nothing in this section shall limit or otherwise modify the rights of any party to a dependency proceeding to request and receive a court review hearing pursuant to the provisions of chapter 13.34 RCW or applicable court rules.

Sec. 38. RCW 13.70.140 and 1993 c 505 s 4 are each amended to read as follows:

A permanency planning hearing shall be held before the court in accordance with RCW 13.34.145. Thereafter, court review hearings shall occur at least once every six months, under ~~((RCW 13.34.130(5)))~~ section 19 of this act, until the child is no longer within the jurisdiction of the court or the child returns home or a guardianship order or adoption decree is entered. The court may review the case more frequently upon the court's own motion or upon the request of any party to the proceeding.

Sec. 39. RCW 26.44.115 and 1990 c 246 s 10 are each amended to read as follows:

If a child is taken into custody by child protective services pursuant to a court order issued under ~~((RCW 13.34.050))~~ section 5 of this act, the child protective services worker shall take reasonable steps to advise the parents immediately, regardless of the time of day, that the child has been taken into custody, the reasons why the child was taken into custody, and general information about the child's placement. The department shall comply with RCW 13.34.060 when providing notice under this section.

Sec. 40. RCW 74.15.030 and 1997 c 386 s 33 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~~) section 7 of this act or RCW 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 alleged 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 alleged 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.

NEW SECTION. Sec. 41. RCW 13.34.170 shall be recodified to appear immediately following RCW 13.34.160.

NEW SECTION. Sec. 42. The following acts or parts of acts are each repealed:

(1) RCW 13.34.162 (Child support schedule) and 1993 c 412 s 10 and 1988 c 275 s 15; and

(2) RCW 13.34.220 (Order terminating parent and child relationship—Prevailing party to present findings, etc., to court, when) and 1979 c 155 s 50.

Passed the Senate March 6, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 123

[Engrossed Substitute Senate Bill 6218]

FAMILY RECONCILIATION ACT

AN ACT Relating to technical and clarifying amendments to the family reconciliation act; amending RCW 13.32A.010, 13.32A.030, 13.32A.040, 13.32A.042, 13.32A.044, 13.32A.050, 13.32A.060, 13.32A.065, 13.32A.080, 13.32A.082, 13.32A.090, 13.32A.095, 13.32A.100, 13.32A.120, 13.32A.130, 13.32A.140, 13.32A.150, 13.32A.152, 13.32A.160, 13.32A.170, 13.32A.179, 13.32A.191, 13.32A.194, 13.32A.196, and 13.32A.200; adding a new section to chapter 13.32A RCW; creating a new section; repealing RCW 13.32A.210; and providing an expiration date.

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

Sec. 1. RCW 13.32A.010 and 1995 c 312 s 1 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 of parents make them better qualified to establish guidelines beneficial to and protective of 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.

Sec. 2. RCW 13.32A.030 and 1997 c 146 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) "Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Administrator" means the individual who has the daily administrative responsibility of a crisis residential center, or his or her designee.

~~((2))~~ (3) "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.

~~((3))~~ (4) "Child," "juvenile," and "youth" mean any unemancipated individual who is under the chronological age of eighteen years.

~~((4))~~ (5) "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 on two or more separate occasions from the home of either 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: (A) Necessary services, including food, shelter, health care, clothing, ~~(educational;)~~ or education; or (B) services designed to maintain or reunite the family;

(ii) Who lacks access to, 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.

~~((5))~~ (6) "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.

~~((6))~~ (7) "Crisis residential center" means a secure or semi-secure facility established pursuant to chapter 74.13 RCW.

~~((7))~~ (8) "Custodian" means the person or entity who has the legal right to the custody of the child.

~~((8))~~ (9) "Department" means the department of social and health services.

~~((9))~~ (10) "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.

~~((10))~~ (11) "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.

~~((11))~~ (12) "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.

~~((12))~~ (13) "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.

~~((13))~~ (14) "Parent" means the parent or parents who have the legal right to custody of the child. "Parent" includes custodian or guardian.

~~((14))~~ (15) "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.

~~((15))~~ (16) "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. 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.

~~((16))~~ (17) "Staff secure facility" means a structured group care facility licensed under rules adopted by the department with a ratio of at least one adult staff member to every two children.

~~((17))~~ (18) "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.

Sec. 3. RCW 13.32A.040 and 1995 c 312 s 5 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))~~. These services 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 ~~((Family reconciliation services may also include))~~, and training in parenting, conflict management, and dispute resolution skills.

Sec. 4. RCW 13.32A.042 and 1995 c 312 s 13 are each amended 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 RCW 13.32A.179. The court may allow the team to continue if an out-of-home

placement is ordered under RCW 13.32A.179(3). 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 RCW 13.32A.179(3).

(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.))~~

Sec. 5. RCW 13.32A.044 and 1995 c 312 s 14 are each amended 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) 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.

(3) 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))~~ (4) 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))~~ (5) 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. 6. RCW 13.32A.050 and 1997 c 146 s 2 are each amended to read as follows:

(1) A law enforcement officer shall take a child into custody:

(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

(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

(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

(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))~~ under this chapter ~~((13.32A))~~ or chapter 13.34 RCW or that the court has issued an order for law enforcement pick-up of the child under this chapter or chapter 13.34 RCW.

(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. Law enforcement custody continues until the law enforcement officer transfers custody to a person, agency, or other authorized entity under this chapter, or releases the child because no placement is available.

Transfer of custody is not complete unless the person, agency, or entity to whom the child is released agrees to accept custody.

(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. The center shall provide the department with a copy of the officer's report.

(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))~~ has a reasonable suspicion that a child is being unlawfully harbored ~~((under RCW 13.32A.080 or for other reasons has a reasonable suspicion that a child is being harbored under))~~ in violation of 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 1997 c 146 s 3 are each amended to read as follows:

(1) An officer taking a child into custody under RCW 13.32A.050(1) (a) or (b) shall inform the child of the reason for such custody and shall:

(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 parent may request that the officer take the child to the home of an adult extended family member, responsible adult, crisis residential center, the department, or a licensed youth shelter. In responding to the request of the parent, the officer shall take the child to a requested place which, in the officer's belief, is within a reasonable distance of the parent's home. The officer releasing a child into the custody of a parent, an adult extended family member, responsible adult, or a licensed youth shelter shall inform the person receiving the child of the reason for taking the child into custody and inform all parties of the nature and location of appropriate services available in the community; or

(b) After attempting to notify the parent, take the child to a designated crisis residential 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 if:

(i) ~~((f))~~ 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 some type of (~~child~~) abuse or neglect(~~(as defined in RCW 26.44.020)~~);

(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; or

(c) After attempting to notify the parent, if a crisis residential center is full, not available, or not located within a reasonable distance, (~~the officer may~~) request the department to accept custody of the child. If the department determines that an appropriate placement is currently available, the department shall accept custody and place the child in an out-of-home placement. Upon accepting custody of a child from the officer, the department may place the child in an out-of-home placement for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, without filing a child in need of services petition (~~under this chapter~~), obtaining parental consent, or obtaining an order for placement under chapter 13.34 RCW. Upon transferring a child to the department's custody, the officer shall provide written documentation of the reasons and the statutory basis for taking the child into custody. If the department declines to accept custody of the child, the officer may release the child after attempting to take the child to the following, in the order listed: The home of an adult extended family member; a responsible adult; or a licensed youth shelter (~~and~~). The officer shall immediately notify the department if no placement option is available and the child is released.

(2) An officer taking a child into custody under RCW 13.32A.050(1) (c) or (d) shall inform the child of the reason for custody. An officer taking a child into custody under RCW 13.32A.050(1)(c) may release the child to the supervising agency, or shall take the child to a designated crisis residential center's secure facility. If the secure facility is not available, not located within a reasonable distance, or full, the officer shall take the child to a semi-secure crisis residential center. An officer taking a child into custody under RCW 13.32A.050(1)(d) may place the child in a juvenile detention facility as provided in RCW 13.32A.065 or a secure facility, except that the child shall be taken to detention whenever the officer has been notified that a juvenile court has entered a detention order under this chapter or chapter 13.34 RCW.

(3) Every officer taking a child into custody shall provide the child and his or her parent or parents or responsible adult with a copy of the statement specified in RCW 13.32A.130(6).

(4) Whenever an officer transfers custody of a child to a crisis residential center or the department, the child may reside in the crisis residential center or may be placed by the department in an out-of-home placement for an aggregate total period of time not to exceed seventy-two hours excluding Saturdays, Sundays, and holidays. Thereafter, the child may continue in out-of-home placement only if the parents have consented, a child in need of services petition has been filed (~~under this chapter~~), or an order for placement has been entered under chapter 13.34 RCW.

~~((4))~~ (5) The department shall ensure that all law enforcement authorities are informed on a regular basis as to the location of all designated secure and semi-secure facilities within centers in their jurisdiction, where children taken into custody under RCW 13.32A.050 may be taken.

Sec. 8. RCW 13.32A.065 and 1996 c 133 s 12 are each amended to read as follows:

(1) ~~((A child may be placed in detention after being taken into custody pursuant to RCW 13.32A.050(1)(d).))~~ If a child is placed in detention under RCW 13.32A.050(1)(d), the court shall hold a detention review hearing within twenty-four hours, excluding Saturdays, Sundays, and holidays. The court shall release the child after twenty-four hours, excluding Saturdays, Sundays, and holidays, unless:

(a) A motion and order to show why the child should not be held in contempt has been filed and served on the child at or before the detention hearing; and

(b) The court believes that the child would not appear at a hearing on contempt.

(2) If the court orders the child to remain in detention, the court shall set the matter for a hearing on contempt within seventy-two hours, excluding Saturdays, Sundays, and holidays.

Sec. 9. RCW 13.32A.080 and 1994 sp.s. c 7 s 507 are each amended to read as follows:

(1)(a) A person commits the crime of unlawful harboring of a minor if the person provides shelter to a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent's permission, and if the person intentionally:

(i) Fails to release the minor to a law enforcement officer after being requested to do so by the officer; or

(ii) Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the officer, if the person knows the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location; or

(iii) Obstructs a law enforcement officer from taking the minor into custody; or

(iv) Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer.

(b) It is a defense to a prosecution under this section that the defendant had custody of the minor pursuant to a court order.

(2) Unlawful harboring of a minor is punishable as a gross misdemeanor.

(3) Any person who provides shelter to a child, absent from home, may notify the department's local community service office of the child's presence.

(4) An adult responsible for involving a child in the commission of an offense may be prosecuted under existing criminal statutes including, but not limited to:

- (a) Distribution of a controlled substance to a minor, as defined in RCW 69.50.406;
- (b) Promoting prostitution as defined in chapter 9A.88 RCW; and
- (c) Complicity of the adult in the crime of a minor, under RCW 9A.08.020.

Sec. 10. RCW 13.32A.082 and 1996 c 133 s 14 are each amended 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 without the permission of the parent, 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 a lawfully prescribed residence or home without parental permission.

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family.

Sec. 11. RCW 13.32A.090 and 1996 c 133 s 7 are each amended to read as follows:

(1) The administrator of a designated crisis residential center or the department shall perform the duties under subsection ~~((2))~~ (3) 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)))~~ 13.32A.082 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.060.

(2) Transportation expenses of the child shall be at the parent's expense to the extent of his or her ability to pay, with any unmet transportation expenses assumed by the department.

(3) When any of the circumstances under subsection (1) of this section are present, the administrator of a center or the department 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; and either

(d)(i) 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; or

~~((e))~~ (i) Arrange transportation for the child to: (i) An out-of-home placement which may include a licensed group care facility or foster family when agreed to by the child and parent; or (ii) a certified or licensed mental health or chemical dependency program of the parent's choice ~~((at the parent's expense to the extent of his or her ability to pay, with any unmet transportation expenses assumed by the department)).~~

~~((3))~~ (4) If the administrator of the crisis residential center performs the duties listed in subsection ~~((2))~~ (3) of this section, he or she shall also notify the department that a child has been admitted to the crisis residential center.

Sec. 12. RCW 13.32A.095 and 1996 c 133 s 15 are each amended to read as follows:

The administrator of ~~((the))~~ a crisis residential center shall notify parents ~~((and)),~~ the appropriate law enforcement agency, and the department immediately as to any unauthorized leave from the center by a child placed at the center.

Sec. 13. RCW 13.32A.100 and 1996 c 133 s 16 are each amended to read as follows:

Where a child is placed in an out-of-home placement pursuant to RCW 13.32A.090~~((2)(e))~~ (3)(d)(ii), the department shall make available family reconciliation services in order to facilitate the reunification of the family. Any such placement may continue as long as there is agreement by the child and parent.

Sec. 14. RCW 13.32A.120 and 1996 c 133 s 18 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 out-of-home placement arrived at pursuant to RCW 13.32A.090~~((2)(e))~~ (3)(d)(ii), the administrator of 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 out-of-home placement under RCW 13.32A.090~~((2)(e))~~ (3)(d)(ii), either the child or parent may file ~~((with the juvenile court))~~ a child in need of services petition to approve an out-of-home placement or the parent may file ~~((with the juvenile court a))~~ an at-risk youth 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 out-of-home placement ~~((arrived at))~~ under RCW 13.32A.090~~((2)(e))~~ (3)(d)(ii), either the child or parent may file ~~((with the juvenile court))~~ a child in need of services petition to ~~((approve))~~ continue an out-of-home placement or the parent may file ~~((with the juvenile court a))~~ an at-risk youth petition ~~((in the interest of a child alleged to be an at-risk youth under this chapter))~~.

Sec. 15. RCW 13.32A.130 and 1997 c 146 s 4 are each amended to read as follows:

(1) A child admitted to a secure facility ~~((within a crisis residential center))~~ shall remain in the facility for at least twenty-four hours after admission but for not more than five consecutive days~~((, but for at least twenty-four hours after admission))~~. If the child admitted under this section is transferred ~~((between centers or))~~ between secure and semi-secure facilities, the aggregate length of time spent in all such centers or facilities may not exceed five consecutive days per 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 is likely to remain in a semi-secure facility and may transfer the child to a semi-secure facility or release the child to the department. 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 consider the following information if known: (A) The 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 the assessment.

(b) If the administrator of a secure facility 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 only 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 he or she reasonably believes that the child is likely to leave the semi-secure facility and not return and after full consideration of all factors in (a)(i) and (ii) of this subsection.

(3) If no parent is available or willing to remove the child during the first seventy-two hours following admission, the department shall consider the filing of a petition under RCW 13.32A.140.

(4) 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 or any agency legally charged with the supervision of a child may remove a child from a crisis residential center at any time after the first twenty-four-hour period after admission has elapsed and only after full consideration by all parties of the factors in subsection (2)(a) of this section.

(5) Crisis residential center staff shall make 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))~~ admission, and if the administrator of the center does not consider it likely that reconciliation will be achieved within the five-day period, then the administrator shall inform the parent and child of: (a) The availability of counseling services; (b) the right to file a child in need of services petition for an 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; (d) the right to request a review of any out-of-home placement; (e) the right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and (f) the right to request treatment in a program to address the child's at-risk behavior under RCW 13.32A.197.

(6) At no time shall information regarding a parent's or child's rights be withheld. 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.

(7) A crisis residential center and ~~((its administrator or his or her designee))~~ any person employed at the center acting in good faith in carrying out the provisions of this section are immune from criminal or civil liability for such actions.

Sec. 16. RCW 13.32A.140 and 1997 c 146 s 5 are each amended to read as follows:

Unless the department files a dependency petition, the department shall file a child in need of services petition to approve an 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 by the department in an out-of-home placement, and:

- (a) The parent has been notified that the child was so admitted or placed;
- (b) The child cannot return home, and legal authorization is needed for out-of-home placement beyond seventy-two hours;
- (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 has been filed by either the child or 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.

(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))~~ (3)(d)(ii) 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 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 an 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 the juvenile court. The department may authorize emergency medical or dental care for a child admitted to a crisis residential center or placed in an out-of-home placement by the department. The state, when the department files a child in need of services petition under this section, shall be represented as provided for in RCW 13.04.093.

Sec. 17. RCW 13.32A.150 and 1996 c 133 s 20 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the juvenile court shall not accept the filing of 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 the department has completed 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 RCW 13.32A.191.

(2) A child or a child's parent may file with the juvenile court a child in need of services petition to approve an out-of-home placement for the child. The department shall, when requested, assist either a parent or child in the filing of the petition. The petition must be filed in the county where the parent resides. The petition shall allege that the child is a child in need of services and shall ask only that the placement of a child outside the home of his or her parent be approved. The filing of a petition to approve 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 out-of-home placement under this chapter.

(3) A petition may not be filed if the child is the subject of a proceeding under chapter 13.34 RCW.

Sec. 18. RCW 13.32A.152 and 1996 c 133 s 21 are each amended to read as follows:

(1) Whenever a child in need of services petition is filed by: (a) A youth pursuant to RCW 13.32A.150(-); (b) the child or the child's parent pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW 13.32A.140, the filing party 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.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

Sec. 19. RCW 13.32A.160 and 1997 c 146 s 6 are each amended to read as follows:

(1) When a proper child in need of services petition to approve an out-of-home placement is filed under RCW 13.32A.120, 13.32A.140, or 13.32A.150 the juvenile court shall: (a)(i) Schedule a fact-finding hearing to be held: (A) For a child who resides in a place other than his or her parent's home and other than an out-of-home placement, within five calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the preceding judicial day; or (B) for a child living at home or in an out-of-home placement, within ten days; and (ii) 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 a child in need of services 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 an 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 (f) notify all parties, including the department, of their right to present evidence at the fact-finding hearing.

(2) Upon filing of 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 other than a HOPE center to be determined by the department. The court may place a child in a crisis residential center for a temporary out-of-home placement as long as the requirements of RCW 13.32A.125 are met.

(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 petition by the court. Any placement may be reviewed by the court within three judicial days upon the request of the juvenile or the juvenile's parent.

Sec. 20. RCW 13.32A.170 and 1996 c 133 s 23 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, 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. At the commencement of the hearing, the court shall advise the parents of their rights as set forth in RCW 13.32A.160(1). If the court approves or denies a child in need of services petition, a written statement of the reasons must be filed.

(2) 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 child is a child in need of services as defined in RCW 13.32A.030(~~((4))~~) (5);

(b) If the petitioner is a child, he or she has made a reasonable effort to resolve the conflict;

(c) 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

(d) 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.

The court may not grant the petition if the child is the subject of a proceeding under chapter 13.34 RCW.

(3) Following the fact-finding hearing the court shall: (a) Approve a child in need of services petition and, if appropriate, 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 RCW 13.32A.179(2); (b) approve an at-risk youth petition filed by the parents and dismiss the child in need of services petition; or (c) dismiss the petition(~~(; or (d))~~).

At any time the court may order the department to review the case to determine whether the case is appropriate for a dependency petition under chapter 13.34 RCW.

Sec. 21. RCW 13.32A.179 and 1997 c 146 s 7 are each amended to read as follows:

(1) A disposition 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 by the court of the time and place of the hearing.

(2) At the conclusion of the disposition hearing, the court may: (a) Reunite the family and dismiss the petition; (b) approve an at-risk youth petition filed by the parents and dismiss the child in need of services petition; (c) approve an out-of-home placement requested in the child in need of services petition by the parents; or (d) order an out-of-home placement at the request of the child or the department not to exceed ninety days(~~(; or (e))~~).

At any time the court may order the department to review the matter for purposes of filing a dependency petition under chapter 13.34 RCW. Whether or

not the court approves or orders an out-of-home placement, the court may also order any conditions of supervision as set forth in RCW 13.32A.196~~((2))~~ (3).

(3) The court may only enter an order under subsection (2)(d) of this section 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 problems that led to the filing of the petition; (v) the problems 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.

(4) 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. The plan, if ordered, shall address the needs of the child, and the perceived needs of the parents if the order was entered under subsection (2)(d) of this section or if specifically agreed to by the parents. If the parents do not agree or the order was not entered under subsection (2)(d) of this section the plan may only make recommendations regarding services in which the parents may voluntarily participate. 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 with timely notification of all court hearings.

(5) 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.

(6) After the court approves or orders an out-of-home placement, the parents or the department may request, and the court may grant, dismissal of the child in need of services proceeding 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.

(7) The court shall dismiss a placement made under subsection (2)(c) of this section upon the request of the parents.

Sec. 22. RCW 13.32A.191 and 1995 c 312 s 25 are each amended 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. 23. RCW 13.32A.194 and 1996 c 133 s 27 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 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, 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 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 fact-finding hearing. 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. 24. RCW 13.32A.196 and 1995 c 312 s 28 are each amended to read as follows:

(1) A dispositional hearing shall be held no later than fourteen days after the fact-finding hearing. Each party shall be notified of the time and date of the hearing.

(2) 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))~~ (3) 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))~~ (4) 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))~~ (5) 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))~~ (6) 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 RCW 13.32A.179; or (c) an order has been entered under RCW 13.32A.179(3) 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.

~~((6))~~ (7) 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. 25. RCW 13.32A.200 and 1979 c 155 s 34 are each amended to read as follows:

All hearings pursuant to this chapter may be conducted at any time or place within the county of the residence of the parent and such cases shall not be heard in conjunction with the business of any other division of the superior court. The ~~(general)~~ public shall be excluded from hearings and only such persons who are found by the court to have a direct interest in the case or the work of the court shall be admitted to the proceedings.

NEW SECTION. Sec. 26. The department of social and health services shall prepare a report to the legislature and governor on the utilization of multidisciplinary teams established under RCW 13.32A.042. The report shall include: (1) The number of teams established in 1997 through 1999 by department region; (2) the persons added to the teams at the request of a parent or child; (3) the average cost per team; (4) trends in utilization of teams by region; (5) a comparison of out-of-home placement rates for youths whose families use the teams and those who do not; and (6) any recommendations on the creation and usefulness of the teams. The report shall be submitted no later than October 1, 2000. This section expires January 1, 2001.

NEW SECTION. Sec. 27. 1990 c 276 s 1 (uncodified) shall be codified as a section within chapter 13.32A RCW.

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CHAPTER 124

[Engrossed Substitute Senate Bill 6305]
GUARDIANS AD LITEM

AN ACT Relating to guardians ad litem; amending RCW 11.88.090, 13.34.100, 13.34.102, 13.34.105, 13.34.120, 26.12.175, 26.12.177, and 26.12.185; adding new sections to chapter 26.12 RCW; adding new sections to chapter 11.88 RCW; adding new sections to chapter 13.34 RCW; and creating a new section.

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

Sec. 1. RCW 11.88.090 and 1999 c 360 s 1 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 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 or her behalf.

(2) Prior to the appointment of a guardian or a limited guardian, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of the alleged incapacitated person or the guardian ad litem, or subsequent to such appointment, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of any interested person, the court may:

(a) Require any party or other person subject to the jurisdiction of the court to participate in mediation;

(b) Establish the terms of the mediation; and

(c) Allocate the cost of the mediation pursuant to RCW 11.96.140.

(3) 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; and

(b) Have the requisite knowledge, training, or expertise to perform the duties required by this section.

The guardian ad litem shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, each party with a statement including: His or her training relating to the duties as a guardian ad litem; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the guardian ad litem has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the guardian ad litem's statement, any party may set a hearing and file and serve a motion for an order to show cause why the guardian ad litem should not be removed for one of the following three reasons: (i) Lack of expertise necessary for the proceeding; (ii) an hourly rate higher than what is reasonable for the particular proceeding; or (iii) a conflict of interest. Notice of the hearing shall be provided to the guardian ad litem and all parties. If, after a hearing, the court enters an order replacing the guardian ad litem, findings shall be included, expressly stating the reasons for the removal. If the guardian ad litem is not removed, the court has the authority to assess to the moving party, attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

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.

(4)(a) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

(b) To be eligible for the registry a person shall:

(i) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

(A) Level of formal education;

(B) Training related to the guardian ad litem's duties;

(C) Number of years' experience as a guardian ad litem;

(D) Number of appointments as a guardian ad litem and the county or counties of appointment;

(E) Criminal history, as defined in RCW 9.94A.030; and

(F) Evidence of 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.

The written statement of qualifications shall include ~~((a statement of the number of times the guardian ad litem has been removed for failure to perform his or her duties as guardian ad litem))~~ the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(ii) Complete the ~~((model))~~ training ~~((program))~~ as described in ~~((d))~~ (e) of this subsection. The training is not applicable to guardians ad litem appointed pursuant to special proceeding Rule 98.16W.

(c) Superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(d) The background and qualification information shall be updated annually.

~~((d))~~ (e) The department of social and health services shall convene an advisory group to develop a model guardian ad litem training program and shall update the program biennially. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.

~~((e))~~ (f) The superior court shall require utilization of the model program developed by the advisory group as described in ~~((d))~~ (e) 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.

(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 investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, ~~((or))~~ durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship;

(f) 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 any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;

(v) 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;

(vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(viii) 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

(ix) 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 hearing 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 fifteen 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 counsel, spouse, all children not residing with a notified person, those persons described in (f)(viii) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150. If the guardian ad litem needs additional time to finalize his or her report, then the guardian ad litem shall petition the court for a postponement of the hearing or, with the consent of all other parties, an extension or reduction of time for filing the report. If the hearing does not occur within sixty days of filing

the petition, then upon the two-month anniversary of filing the petition and on or before the same day of each following month until the hearing, the guardian ad litem shall file interim reports summarizing his or her activities on the proceeding during that time period as well as fees and costs incurred;

(g) 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 subsection (5)(f) of this section.

(7) The parties to the proceeding may file responses to the guardian ad litem report with the court and deliver such responses to the other parties and the guardian ad litem at any time up to the second day prior to the hearing. If a guardian ad litem fails to file his or her report in a timely manner, the hearing shall be continued to give the court and the parties at least fifteen days before the hearing to review the report. At any time during the proceeding upon motion of any party or on the court's own motion, the court may remove the guardian ad litem for failure to perform his or her duties as specified in this chapter, provided that the guardian ad litem shall have five days' notice of any motion to remove before the court enters such order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out his or her duties.

(8) 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.

(9) The court-appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

(10) 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))~~ any person who has appeared in the action; or may allocate 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.

(11) 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.

(12) The guardian ad litem shall appear in person at all hearings on the petition unless all parties provide a written waiver of the requirement to appear.

(13) At any hearing the court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty.

Sec. 2. RCW 13.34.100 and 1996 c 249 s 13 are each amended to read as follows:

(1) The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by independent counsel in the proceedings.

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background file shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) Training related to the guardian's duties;
- (c) Number of years' experience as a guardian ad litem;
- (d) Number of appointments as a guardian ad litem and the county or counties of appointment; ~~((and))~~

(e) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(f) Criminal history, as defined in RCW 9.94A.030.

The background information report shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person shall provide the background information to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a statement containing: His or her training relating to the duties as a guardian ad litem; the name of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment. The background statement shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

(6) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.

(7) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to represent the best interests of the minor in proceedings before the court.

(8) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends and the appointment shall be effective immediately. The court shall appoint the person recommended by the program. If a party in a case reasonably believes the court-appointed special advocate or volunteer is inappropriate or unqualified, the party may request a review of the appointment by the program.

The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate on the grounds the advocate or volunteer is inappropriate or unqualified.

Sec. 3. RCW 13.34.102 and 1997 c 41 s 6 are each amended to read as follows:

(1) All guardians ad litem ~~((, who have not previously served or been trained as a guardian ad litem in this state, who are appointed after January 1, 1998,))~~ must ~~((complete the curriculum developed by the office of the administrator for the courts))~~ comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 13 RCW, except that volunteer guardians ad litem or court-appointed special advocates ~~((accepted into a volunteer program after January 1, 1998,))~~ may ~~((complete an))~~ comply with alternative ~~((curriculum))~~ training requirements approved by the office of the administrator for the courts that meet~~((s))~~ or exceed~~((s))~~ the state-wide ~~((curriculum))~~ requirements.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 13.34.100(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs.

Sec. 4. RCW 13.34.105 and 1999 c 390 s 2 are each amended to read as follows:

(1) Unless otherwise directed by the court, the duties of the guardian ad litem include but are not limited to the following:

(a) ~~To ((represent))~~ investigate, collect relevant information about the child's situation, and ((be an advocate for)) report to the court factual information regarding the best interests of the child;

(b) ~~((To collect relevant information about the child's situation; —(e)))~~ To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order; ~~((and~~

~~—(d)))~~ (c) To report to the court information on the legal status of a child's membership in any Indian tribe or band;

(d) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties; and

(e) To represent and be an advocate for the best interests of the child.

(2) ~~((The))~~ A guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(5), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) A guardian ad litem may release confidential information, records, and reports to the office of the family and children's ombudsman for the purposes of carrying out its duties under chapter 43.06A RCW.

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100.

Sec. 5. RCW 13.34.120 and 1998 c 328 s 4 are each amended to read as follows:

(1) To aid the court in its decision on disposition, a social study, consisting of a written evaluation of matters relevant to the disposition of the case, shall be made by the person or agency filing the petition. A parent may submit a counselor's or health care provider's evaluation of the parent, which shall either be included in the social study or considered in conjunction with the social study. The study shall include all social records and may also include facts relating to the child's cultural heritage, and shall be made available to the court. The court shall consider the social file, social study, guardian ad litem report, the court-appointed special

advocate's report, if any, and any reports filed by a party at the disposition hearing in addition to evidence produced at the fact-finding hearing. At least ten working days before the disposition hearing, the department shall mail to the parent and his or her attorney a copy of the agency's social study and proposed service plan, which shall be in writing or in a form understandable to the parents or custodians. In addition, the department shall provide an opportunity for parents to review and comment on the plan at the community service office. If the parents disagree with the agency's plan or any part thereof, the parents shall submit to the court at least twenty-four hours before the hearing, in writing, or signed oral statement, an alternative plan to correct the problems which led to the finding of dependency. This section shall not interfere with the right of the parents or custodians to submit oral arguments regarding the disposition plan at the hearing.

(2) In addition to the requirements set forth in subsection (1) of this section, a predisposition study to the court in cases of dependency alleged pursuant to RCW 13.34.030(4) (b) or (c) shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific programs, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such programs are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs which have been considered and rejected; the preventive services that 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 the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal. This section should include an exploration of the nature of the parent-child attachment and the meaning of separation and loss to both the parents and the child;

(e) A description of the steps that will be taken to minimize harm to the child that may result if separation occurs; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(3)(a) The guardian ad litem or court-appointed special advocate shall file his or her report with the court and with the parties pursuant to court rule prior to a hearing for which a report is required. The report shall include a written list of persons interviewed and reports or documentation considered. If the report makes particular recommendations, the report shall include specific information on which

the guardian ad litem or court-appointed special advocate relied in making each particular recommendation.

(b) The parties to the proceeding may file written responses to the guardian ad litem's or court-appointed special advocate's report with the court and deliver such responses to the other parties at a reasonable time or pursuant to court rule before the hearing. The court shall consider any written responses to the guardian ad litem's or court-appointed special advocate's report, including any factual information or recommendations provided in the report.

Sec. 6. RCW 26.12.175 and 1996 c 249 s 15 are each amended to read as follows:

(1)(a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter. The family court services professionals may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child. The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county.

(b) Unless otherwise ordered, the guardian ad litem's role is to investigate and report factual information to the court concerning parenting arrangements for the child, and to represent the child's best interests. Guardians ad litem and investigators under this title may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties. If a child expresses a preference regarding the parenting plan, the guardian ad litem shall report the preferences to the court, together with the facts relative to whether any preferences are being expressed voluntarily and the degree of the child's understanding. The court may require the guardian ad litem to provide periodic reports to the parties regarding the status of his or her investigation. The guardian ad litem shall file his or her report at least sixty days prior to trial.

(c) The parties to the proceeding may file with the court written responses to any report filed by the guardian ad litem or investigator. The court shall consider any written responses to a report filed by the guardian ad litem or investigator, including any factual information or recommendations provided in the report.

(d) The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority. Guardians ad litem who are not volunteers shall provide the parties with an itemized accounting of their time and billing for services each month.

(2)(a) If the guardian ad litem appointed is from the county court-appointed special advocate program, the program shall supervise any guardian ad litem

assigned to the case. The court-appointed special advocate program shall be entitled to notice of all proceedings in the case.

(b) The legislative authority of each county may authorize creation of a court-appointed special advocate program. The county legislative authority may adopt rules of eligibility for court-appointed special advocate program services.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background file shall include, but is not limited to, the following information:

(a) Level of formal education;

(b) Training related to the guardian's duties;

(c) Number of years' experience as a guardian ad litem;

(d) Number of appointments as a guardian ad litem and county or counties of appointment; ~~(and)~~

(e) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(f) Criminal history, as defined in RCW 9.94A.030.

The background information report shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person shall provide the background information to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a statement containing: His or her training relating to the duties as a guardian ad litem; the name of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment. The background statement shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends and the appointment shall be effective immediately. The court shall appoint the person recommended by the program. If a party in a case reasonably believes the court-appointed special advocate or volunteer is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal

of the court-appointed special advocate on the grounds the advocate or volunteer is inappropriate or unqualified.

Sec. 7. RCW 26.12.177 and 1997 c 41 s 7 are each amended to read as follows:

(1) All guardians ad litem (~~(, who have not previously served or been trained as a guardian ad litem in this state, who are appointed after January 1, 1998,)~~) and investigators appointed under this title must ~~((complete the curriculum developed by the office of the administrator for the courts))~~ comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates ~~((accepted into a volunteer program after January 1, 1998,))~~ may ~~((complete an))~~ comply with alternative ~~((curriculum))~~ training requirements approved by the office of the administrator for the courts that meet~~((s))~~ or exceed~~((s))~~ the state-wide ~~((curriculum))~~ requirements.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem and investigators under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem and investigators under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs.

NEW SECTION. Sec. 8. A new section is added to chapter 26.12 RCW to read as follows:

All information, records, and reports obtained or created by a guardian ad litem, court-appointed special advocate, or investigator under this title shall be discoverable pursuant to statute and court rule. The guardian ad litem, court-appointed special advocate, or investigator shall not release private or confidential information to any nonparty except pursuant to a court order signed by a judge. The guardian ad litem, court-appointed special advocate, or investigator may share private or confidential information with experts or staff he or she has retained as necessary to perform the duties of guardian ad litem, court-appointed special advocate, or investigator. Any expert or staff retained are subject to the confidentiality rules governing the guardian ad litem, court-appointed special advocate, or investigator. Nothing in this section shall be interpreted to authorize disclosure of guardian ad litem records in personal injury actions.

Sec. 9. RCW 26.12.185 and 1999 c 390 s 4 are each amended to read as follows:

A guardian ad litem, court-appointed special advocate, or investigator under this title appointed under this chapter may release confidential information, records, and reports to the office of the family and children's ombudsman for the purposes of carrying out its duties under chapter 43.06A RCW.

NEW SECTION. Sec. 10. A new section is added to chapter 11.88 RCW to read as follows:

A guardian ad litem shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case.

NEW SECTION. Sec. 11. A new section is added to chapter 13.34 RCW to read as follows:

A guardian ad litem or court-appointed special advocate shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian

ad litem or court-appointed special advocate who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case.

NEW SECTION. **Sec. 12.** A new section is added to chapter 26.12 RCW to read as follows:

A guardian ad litem, court-appointed special advocate, or investigator shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem, court-appointed special advocate, or investigator who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case.

NEW SECTION. **Sec. 13.** A new section is added to chapter 11.88 RCW to read as follows:

The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule.

NEW SECTION. **Sec. 14.** A new section is added to chapter 13.34 RCW to read as follows:

The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule.

NEW SECTION. **Sec. 15.** A new section is added to chapter 26.12 RCW to read as follows:

Except for guardians ad litem appointed by the court from the subregistry created under RCW 26.12.177(2)(d), the court shall specify the hourly rate the guardian ad litem or investigator under this title may charge for his or her services, and shall specify the maximum amount the guardian ad litem or investigator under this title may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court

is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule.

NEW SECTION. Sec. 16. Each superior court shall adopt rules establishing and governing procedures for filing, investigating, and adjudicating grievances made by or against guardians ad litem under Titles 11, 13, and 26 RCW.

Passed the Senate March 7, 2000.

Passed the House March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 125

[Substitute Senate Bill 6361]

STATE SCHOOLS FOR THE BLIND AND FOR THE DEAF-- CHILD ABUSE--REPORTING--TRAINING

AN ACT Relating to child abuse and neglect reporting, investigation, and training procedures and the administration of the Washington state schools for the blind and for the deaf; amending RCW 72.40.040 and 72.40.050; adding new sections to chapter 72.40 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. A new section is added to chapter 72.40 RCW to read as follows:

The state school for the deaf and the state school for the blind shall promote the personal safety of students and protect the children who attend from child abuse and neglect as defined in RCW 26.44.020.

NEW SECTION. Sec. 2. A new section is added to chapter 72.40 RCW to read as follows:

The superintendents of the state school for the deaf and the state school for the blind or their designees shall immediately report to the persons indicated the following events:

- (1) To the child's parent, custodian, or guardian:
 - (a) The death of the child;
 - (b) Hospitalization of a child in attendance or residence at the school;
 - (c) Allegations of child abuse or neglect in which the parent's child in attendance or residence at the school is the alleged victim;
 - (d) Allegations of physical or sexual abuse in which the parent's child in attendance or residence at the school is the alleged perpetrator;
 - (e) Life-threatening illness;
 - (f) The attendance at the school of any child who is a registered sex offender under RCW 9A.44.130 as permitted by RCW 4.24.550.
- (2) Notification to the parent shall be made by the means most likely to be received by the parent. If initial notification is made by telephone, such

notification shall be followed by notification in writing within forty-eight hours after the initial oral contact is made.

NEW SECTION. Sec. 3. A new section is added to chapter 72.40 RCW to read as follows:

(1) The superintendents of the state school for the deaf and the state school for the blind shall maintain in writing and implement behavior management policies and procedures that accomplish the following:

(a) Support the child's appropriate social behavior, self-control, and the rights of others;

(b) Foster dignity and self-respect for the child;

(c) Reflect the ages and developmental levels of children in care.

(2) The state school for the deaf and the state school for the blind shall use proactive, positive behavior support techniques to manage potential child behavior problems. These techniques shall include but not be limited to:

(a) Organization of the physical environment and staffing patterns to reduce factors leading to behavior incidents;

(b) Intervention before behavior becomes disruptive, in the least invasive and least restrictive manner available;

(c) Emphasis on verbal deescalation to calm the upset child;

(d) Redirection strategies to present the child with alternative resolution choices.

NEW SECTION. Sec. 4. A new section is added to chapter 72.40 RCW to read as follows:

(1) The state school for the deaf and the state school for the blind shall ensure that all staff, within two months of beginning employment, complete a minimum of fifteen hours of job orientation which shall include, but is not limited to, presentation of the standard operating procedures manual for each school, describing all policies and procedures specific to the school.

(2) The state school for the deaf and the state school for the blind shall ensure that all new staff receive thirty-two hours of job specific training within ninety days of employment which shall include, but is not limited to, promoting and protecting student personal safety. All staff shall receive thirty-two hours of ongoing training in these areas every two years.

NEW SECTION. Sec. 5. A new section is added to chapter 72.40 RCW to read as follows:

The residential program at the state school for the deaf and the state school for the blind shall employ residential staff in sufficient numbers to ensure the physical and emotional needs of the residents are met. Residential staff shall be on duty in sufficient numbers to ensure the safety of the children residing there.

For purposes of this section, "residential staff" means staff in charge of supervising the day-to-day living situation of the children in the residential portion of the schools.

NEW SECTION. Sec. 6. A new section is added to chapter 72.40 RCW to read as follows:

In addition to the powers and duties under RCW 72.40.022 and 72.40.024, the superintendents of the state school for the deaf and the state school for the blind shall:

(1) Develop written procedures for the supervision of employees and volunteers who have the potential for contact with students. Such procedures shall be designed to prevent child abuse and neglect by providing for adequate supervision of such employees and volunteers, taking into consideration such factors as the student population served, architectural factors, and the size of the facility. Such procedures shall include, but need not be limited to, the following:

(a) Staffing patterns and the rationale for such;

(b) Responsibilities of supervisors;

(c) The method by which staff and volunteers are made aware of the identity of all supervisors, including designated on-site supervisors;

(d) Provision of written supervisory guidelines to employees and volunteers;

(e) Periodic supervisory conferences for employees and volunteers; and

(f) Written performance evaluations of staff to be conducted by supervisors in a manner consistent with applicable provisions of the civil service law.

(2) Develop written procedures for the protection of students when there is reason to believe an incident has occurred which would render a child student an abused or neglected child within the meaning of RCW 26.44.020. Such procedures shall include, but need not be limited to, the following:

(a) Investigation. Immediately upon notification that a report of child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the superintendent shall:

(i) Preserve any potential evidence through such actions as securing the area where suspected abuse or neglect occurred;

(ii) Obtain proper and prompt medical evaluation and treatment, as needed, with documentation of any evidence of abuse or neglect; and

(iii) Provide necessary assistance to the department of social and health services and local law enforcement in their investigations;

(b) Safety. Upon notification that a report of suspected child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the superintendent or his or her designee, with consideration for causing as little disruption as possible to the daily routines of the students, shall evaluate the situation and immediately take appropriate action to assure the health and safety of the students involved in the report and of any other students similarly situated, and take such additional action as is necessary to prevent future acts of abuse or neglect. Such action may include:

(i) Consistent with federal and state law:

(A) Removing the alleged perpetrator from the school;

(B) Increasing the degree of supervision of the alleged perpetrator; and

(C) Initiating appropriate disciplinary action against the alleged perpetrator;
 (ii) Provision of increased training and increased supervision to volunteers and staff pertinent to the prevention and remediation of abuse and neglect;

(iii) Temporary removal of the students from a program and reassignment of the students within the school, as an emergency measure, if it is determined that there is a risk to the health or safety of such students in remaining in that program. Whenever a student is removed, pursuant to this subsection (2)(b)(iii), from a special education program or service specified in his or her individualized education program, the action shall be reviewed in an individualized education program meeting; and

(iv) Provision of counseling to the students involved in the report or any other students, as appropriate;

(c) Corrective action plans. Upon receipt of the results of an investigation by the department of social and health services pursuant to a report of suspected child abuse or neglect, the superintendent, after consideration of any recommendations by the department of social and health services for preventive and remedial action, shall implement a written plan of action designed to assure the continued health and safety of students and to provide for the prevention of future acts of abuse or neglect.

NEW SECTION. **Sec. 7.** A new section is added to chapter 72.40 RCW to read as follows:

In consideration of the needs and circumstances of the program, the state school for the deaf and the state school for the blind shall provide instruction to all students in techniques and procedures which will enable the students to protect themselves from abuse and neglect. Such instruction shall be described in a written plan to be submitted to the board of trustees for review and approval, and shall be:

(1) Appropriate for the age, individual needs, and particular circumstances of students, including the existence of mental, physical, emotional, or sensory disabilities;

(2) Provided at different times throughout the year in a manner which will ensure that all students receive such instruction; and

(3) Provided by individuals who possess appropriate knowledge and training, documentation of which shall be maintained by the school.

Sec. 8. RCW 72.40.040 and 1993 c 147 s 3 are each amended to read as follows:

(1) The schools shall be free to residents of the state between the ages of three and twenty-one years, who are blind/visually impaired or deaf/hearing impaired, or with other disabilities where a vision or hearing disability is the major need for services.

(2) The schools may provide nonresidential services to children ages birth through three who meet the eligibility criteria in this section, subject to available funding.

(3) Each school shall admit and retain students on a space available basis according to criteria developed and published by each school superintendent in consultation with each board of trustees and school faculty: PROVIDED, That students over the age of twenty-one years, who are otherwise qualified may be retained at the school, if in the discretion of the superintendent in consultation with the faculty they are proper persons to receive further training given at the school and the facilities are adequate for proper care, education, and training.

(4) The admission and retention criteria developed and published by each school superintendent shall contain a provision allowing the schools to refuse to admit or retain a student who is an adjudicated sex offender except that the schools shall not admit or retain a student who is an adjudicated level III sex offender as provided in RCW 13.40.217(3).

Sec. 9. RCW 72.40.050 and 1985 c 378 s 20 are each amended to read as follows:

(1) The superintendents may admit to their respective schools visually or hearing impaired children from other states as appropriate, but the parents or guardians of such children or other state will be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children as set by the applicable superintendent.

(2) The admission and retention criteria developed and published by each school superintendent shall contain a provision allowing the schools to refuse to admit or retain a nonresident student who is an adjudicated sex offender, or the equivalent under the laws of the state in which the student resides, except that the schools shall not admit or retain a nonresident student who is an adjudicated level III sex offender or the equivalent under the laws of the state in which the student resides.

NEW SECTION. Sec. 10. A new section is added to chapter 72.40 RCW to read as follows:

(1) The schools shall implement a policy for the children who reside at the schools protecting those who are vulnerable to sexual victimization by other children who are sexually aggressive and residing at the schools. The policy shall include, at a minimum, the following elements:

(a) Development and use of an assessment process for identifying children, within thirty days of beginning residence at the schools, who present a moderate or high risk of sexually aggressive behavior for the purposes of this section. The assessment process need not require that every child who is adjudicated or convicted of a sex offense as defined in RCW 9.94A.030 be determined to be sexually aggressive, nor shall a sex offense adjudication or conviction be required in order to determine a child is sexually aggressive. Instead, the assessment process shall consider the individual circumstances of the child, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to sexual aggressiveness. The definition of "sexually

aggressive youth" in RCW 74.13.075 does not apply to this section to the extent that it conflicts with this section;

(b) Development and use of an assessment process for identifying children, within thirty days of beginning residence at the schools, who may be vulnerable to victimization by children identified under (a) of this subsection as presenting a moderate or high risk of sexually aggressive behavior. The assessment process shall consider the individual circumstances of the child, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to vulnerability;

(c) Development and use of placement criteria to avoid assigning children who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as children assessed as vulnerable to sexual victimization, except that they may be assigned to the same multiple-person sleeping quarters if those sleeping quarters are regularly monitored by visual surveillance equipment or staff checks;

(d) Development and use of procedures for minimizing, within available funds, unsupervised contact in the residential facilities of the schools between children presenting moderate to high risk of sexually aggressive behavior and children assessed as vulnerable to sexual victimization. The procedures shall include taking reasonable steps to prohibit any child residing at the schools who present a moderate to high risk of sexually aggressive behavior from entering any sleeping quarters other than the one to which they are assigned, unless accompanied by an authorized adult.

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

(a) "Sleeping quarters" means the bedrooms or other rooms within a residential facility where children are assigned to sleep.

(b) "Unsupervised contact" means contact occurring outside the sight or hearing of a responsible adult for more than a reasonable period of time under the circumstances.

NEW SECTION. Sec. 11. 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. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. Sec. 12. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2000, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 7, 2000.
Passed the House March 1, 2000.
Approved by the Governor March 24, 2000.
Filed in Office of Secretary of State March 24, 2000.

CHAPTER 126

[Engrossed Substitute Senate Bill 6559]

COLLEGE CREDIT—PROGRAM AVAILABILITY—NOTICE

AN ACT Relating to notification of the availability of programs leading to college credit; and adding a new section to chapter 28A.320 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.320 RCW to read as follows:

(1) Beginning with the 2000-01 school year, the superintendent of public instruction shall notify senior high schools and any other public school that includes ninth grade of the names and contact information of public and private entities offering programs leading to college credit, including information about online advanced placement classes, if the superintendent has knowledge of such entities and if the cost of reporting these entities is minimal.

(2) Beginning with the 2000-01 school year, each senior high school and any other public school that includes ninth grade shall publish annually and deliver to each parent with children enrolled in ninth through twelfth grades, information concerning the entrance requirements and the availability of programs in the local area that lead to college credit, including classes such as advanced placement, running start, tech-prep, skill centers, college in the high school, and international baccalaureate programs. The information may be included with other information the school regularly mails to parents. In addition, each senior high school and any other public school that includes ninth grade shall enclose information of the names and contact information of other public or private entities offering such programs, including online advanced placement programs, to its ninth through twelfth grade students if the school has knowledge of such entities.

Passed the Senate March 7, 2000.
Passed the House March 1, 2000.
Approved by the Governor March 24, 2000.
Filed in Office of Secretary of State March 24, 2000.

CHAPTER 127

[Senate Bill 6770]

EXCEPTIONAL FACULTY AWARDS PROGRAM

AN ACT Relating to the exceptional faculty awards program; and amending RCW 28B.50.841.

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

Sec. 1. RCW 28B.50.841 and 1991 c 238 s 65 are each amended to read as follows:

(1) The faculty awards are the property of the institution and may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the institution. The institution shall designate the use of the award to individuals, groups, or for the improvement of faculty as a whole. The designation shall be made or renewed annually.

(2) The institution is responsible for soliciting private donations, investing and maintaining its endowment funds, administering the faculty awards, and reporting on the program to the governor, the college board, and the legislature, upon request. The institution may augment its endowment fund with additional unrestricted private donations. The principal of the invested endowment fund shall not be invaded.

(3) The proceeds from the endowment fund shall be used to pay expenses for faculty awards, which may include faculty development activities, in-service training, temporary substitute or replacement costs directly associated with faculty development programs, conferences, travel, publication and dissemination of exemplary projects; to supplement the salary of the holder or holders of a faculty award; or to pay expenses associated with the holder's program area. Funds from this program shall not be used to supplant existing faculty development funds.

Passed the Senate February 12, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 128

[Second Substitute Senate Bill 6811]

COMMUNITY AND TECHNICAL COLLEGES' PART-TIME EMPLOYEES—SICK LEAVE

AN ACT Relating to sick leave and leave sharing for part-time academic employees of community and technical colleges; amending RCW 28B.50.489 and 28B.50.551; adding a new section to chapter 28B.50 RCW; adding a new section to chapter 28B.52 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.50 RCW to read as follows:

(1) Part-time academic employees of community and technical colleges shall receive sick leave to be used for the same illnesses, injuries, bereavement, and emergencies as full-time academic employees at the college in proportion to the individual's teaching commitment at the college.

(2) The provisions of RCW 41.04.665 shall apply to leave sharing for part-time academic employees who accrue sick leave under subsection (1) of this section.

(3) The provisions of RCW 28B.50.553 shall apply to remuneration for unused sick leave for part-time academic employees who accrue sick leave under subsection (1) of this section.

Sec. 2. RCW 28B.50.489 and 1996 c 120 s 1 are each amended to read as follows:

For the purposes of determining eligibility of state-mandated insurance ((and)), retirement benefits under RCW 28B.10.400, and sick leave for part-time academic employees in community and technical colleges, the following definitions shall be used:

(1) "Full-time academic workload" means the number of in-class teaching hours that a full-time instructor must teach to fulfill his or her employment obligations in a given discipline in a given college. If full-time academic workload is defined in a contract adopted through the collective bargaining process, that definition shall prevail. If the full-time workload bargained in a contract includes more than in-class teaching hours, only that portion that is in-class teaching hours may be considered academic workload.

(2) "In-class teaching hours" means contact classroom and lab hours in which full or part-time academic employees are performing contractually assigned teaching duties. The in-class teaching hours shall not include any duties performed in support of, or in addition to, those contractually assigned in-class teaching hours.

(3) "Academic employee" in a community or technical college means any teacher, counselor, librarian, or department head who is employed by a college district, whether full or part-time, with the exception of the chief administrative officer of, and any administrator in, each college district.

(4) "Part-time academic workload" means any percentage of a full-time academic workload for which the part-time academic employee is not paid on the full-time academic salary schedule.

Sec. 3. RCW 28B.50.551 and 1995 c 119 s 1 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, consistent with section 1 of this act, 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)(a) 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;

(b) For part-time academic employees, such leave entitlement may be accumulated after the first quarter of employment by a college district or the first quarter after the effective date of this section, whichever is later, 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 shall be transferred from one college district to another or between a college district and the following: Any state agency, any educational service district, any school district, or any other institution 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.

NEW SECTION. Sec. 4. A new section is added to chapter 28B.52 RCW to read as follows:

With respect to the community and technical colleges part-time academic employees, the permissible scope of collective bargaining under this chapter shall be governed by section 1 of this act and RCW 28B.50.489.

NEW SECTION. Sec. 5. Nothing contained in this act may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

Passed the Senate March 7, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 129

[Senate Bill 6139]

ESTATE TAX APPORTIONMENT

AN ACT Relating to estate tax apportionment; and amending RCW 83.110.010, 83.110.020, 83.110.030, 83.110.050, 83.110.060, and 83.110.090.

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

Sec. 1. RCW 83.110.010 and 1998 c 292 s 402 are each amended to read as follows:

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

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(2) ~~("Excise tax" means the federal excise tax imposed by section 4980A(d) of the Internal Revenue Code, and interest and penalties imposed in addition to the excise tax;~~

~~—(3))~~ "Fiduciary" means executor, administrator of any description, and trustee;

~~((4))~~ (3) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as defined in and as of the date specified in RCW 83.100.020;

~~((5))~~ (4) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

~~((6))~~ "Persons interested in retirement distributions" means any person determined as of the date the excise tax is due, including a personal representative, guardian, trustee, or beneficiary, entitled to receive, or who has received, by reason of or following the death of a decedent, any property or interest therein which constitutes a retirement distribution as defined in section 4980A(e) of the Internal Revenue Code, but this definition excludes any alternate payee under a qualified domestic relations order as such terms are defined in section 414(p) of the Internal Revenue Code;

~~—(7))~~ (5) "Person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's ~~((taxable))~~ estate;

~~((8))~~ (6) "Qualified heir" means a person interested in the estate who is entitled to receive, or who has received, an interest in qualified real property or a qualified family-owned business interest;

~~((9))~~ (7) "Qualified real property" means real property for which the election described in section 2032A of the Internal Revenue Code has been ~~((made))~~ allowed;

~~((10))~~ (8) "Qualified family-owned business interest" means a family-owned business interest for which the election in section 2057 of the Internal Revenue Code has been allowed;

(9) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

~~((1))~~ (10) "Tax" means the federal estate tax ~~((, the excise tax defined in subsection (2) of this section,))~~ and the estate tax payable to this state and interest and penalties imposed in addition to the tax, but not the additional estate tax under section 2032A(c) or 2057(f) of the Internal Revenue Code. Unless the will, trust, or other dispositive instrument otherwise provides, apportionment of estate, inheritance, legacy, or succession tax payable to any other state, or to any foreign country, and interest and penalties imposed in addition to the tax, shall be governed by the law of that state or foreign country.

Sec. 2. RCW 83.110.020 and 1989 c 40 s 2 are each amended to read as follows:

~~((1) Tax other than excise tax.))~~ Except as provided in RCW 83.110.090 ~~((or subsection (2) of this section)),~~ and unless the will, trust, or other dispositive instrument otherwise provides, the tax ~~((, but not the excise tax,))~~ shall be apportioned among all persons interested in the estate. Except as provided in RCW 83.110.050, the apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. Except as provided in RCW 83.110.050, the values used in determining the tax shall be used for that purpose.

~~((2) Excise tax. Except as provided in RCW 83.110.030(6) and unless the will, beneficiary designation, trust, or other instrument governing the disposition of property subject to the excise tax otherwise provides, the excise tax shall be apportioned among and charged to the persons interested in retirement distributions on which the excise tax is actually imposed. Each person shall be severally liable for the timely payment of the portion of the excise tax so apportioned to the person. The apportionment shall be made in the proportion that the value of the interest of each person interested in the retirement distributions bears to the total value of the interests of all persons interested in the retirement distributions. The values used in determining the excise tax shall be used for that purpose. In order to facilitate timely payment of the excise tax, the fiduciary shall have the right, but not the obligation, in addition to any other power and consistent with the power granted by RCW 11.98.070(13), to make loans, either secured or unsecured at such interest as the fiduciary may determine, not exceeding the amount of the excise tax so apportioned to the persons liable for payment of the excise tax. If the fiduciary or other person is required to pay the excise tax, the fiduciary or other person shall have the rights of recovery provided in RCW 83.110.040 or otherwise.))~~

Sec. 3. RCW 83.110.030 and 1990 c 180 s 6 are each amended to read as follows:

(1) The court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the court of the county wherein the decedent was domiciled at death

shall determine the apportionment of the tax upon the application of the person required to pay the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable.

(3) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in RCW 83.110.020 and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in RCW 83.110.020, it may direct apportionment thereof equitably.

(4) If the court finds that the assessment of penalties and interest is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(5) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter, the determination of the court in respect thereto is prima facie correct.

~~((6) In the case where there are successive interests with respect to retirement distributions, the excise tax shall be equitably apportioned by the court having jurisdiction over the administration of the estate among the persons interested in the retirement distributions as defined in RCW 83.110.010(6).))~~

Sec. 4. RCW 83.110.050 and 1993 c 73 s 11 are each amended to read as follows:

(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed (a) by section 2057 of the Internal Revenue Code, (b) by reason of the relationship of any person to the decedent, or (c) by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that or in proportion that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be

included in the computation provided for in this chapter, and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result under section 2053(d) of the Internal Revenue Code relates to deduction for state death taxes on transfers for public, charitable, or religious uses. To the extent the amount otherwise allowed as a deduction under section 2057 of the Internal Revenue Code does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the amount, the amount shall not be included in the computation provided for in this chapter, and to that extent no apportionment shall be made against the amount.

(6) In the case of qualified real property or a qualified family-owned business interest, the apportionment of the tax shall be based on the values that would have been used to determine the tax without regard to section 2032A or 2057 of the Internal Revenue Code. The reduction in the tax attributable to the application of section 2032A or 2057 shall inure as follows:

(a) First to the benefit of the qualified heirs in proportion to their relative interests in the qualified real property or qualified family-owned business interest, until the tax attributable to the qualified real property or qualified family-owned business interest is reduced to zero;

(b) Then to the qualified heirs in proportion to their relative interests in other property of the estate, until the tax attributable to the property is reduced to zero; and

(c) Then to other persons interested in the estate in proportion to their relative interests in other property of the estate.

(7) Any extension in the payment of a part of the tax under any provision of the Internal Revenue Code shall inure to the benefit of, and the tax subject to the extension shall be equitably apportioned among, the persons receiving the property relating to the extension. Any tax benefit derived from the interest paid with respect to the tax shall be equitably apportioned among the persons receiving the property.

Sec. 5. RCW 83.110.060 and 1989 c 40 s 5 are each amended to read as follows:

~~((Except as otherwise provided in RCW 83.110.030(6),))~~ No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder. No tax shall be paid from a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 of the Internal Revenue Code.

Sec. 6. RCW 83.110.090 and 1989 c 40 s 6 are each amended to read as follows:

If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the federal estate tax law, for example, section 2206, 2207, 2207A, or 2207B of the Internal Revenue Code, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed in this chapter. Nothing in this chapter affects the right of a personal representative to recover payments due an estate pursuant to the provisions of ~~((section 2207A of))~~ the Internal Revenue Code.

Passed the Senate February 9, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 130

[Senate Bill 6140]

PROBATE--REFERENCES TO INTERNAL REVENUE CODE

AN ACT Relating to references in instruments to section 2033A of the internal revenue code; amending RCW 11.02.005; and creating a new section.

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

Sec. I. RCW 11.02.005 and 1999 c 358 s 20 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor and all lawfully adopted children.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020.

(9) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under

chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 1999.

(17) References to "section 2033A" of the Internal Revenue Code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title shall be deemed to refer to the comparable or corresponding provisions of section 2057 of the Internal Revenue Code, as added by section 6006(b) of the Internal Revenue Service Restructuring Act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" shall be deemed to mean the section 2057 deduction.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also.

NEW SECTION. Sec. 2. Section 1 of this act applies to decedents dying after December 31, 1997.

Passed the Senate February 9, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 131

[Second Engrossed Substitute Senate Bill 5610]

USED MOTOR VEHICLE SALES—CURBSTONING—CONSIGNMENT SALES

AN ACT Relating to civil penalties levied by the department of licensing for unlawful sale of used motor vehicles by unlicensed parties; amending RCW 46.70.115 and 46.70.028; creating a new section; and prescribing penalties.

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

Sec. 1. RCW 46.70.115 and 1986 c 241 s 15 are each amended to read as follows:

(1) If it appears to the director that a person has engaged or is about to engage 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. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order pending a hearing. The temporary order shall remain in effect until ten days after the hearing is held and shall become 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 levy and collect a civil penalty, in an amount not to exceed one thousand dollars for each violation, against a person found by the director to be curbstoning, as that term is defined in subsection (3) of this section. A person against whom a civil penalty has been imposed must receive reasonable notice and an opportunity for a hearing on the issue. The civil penalty is due ten days after issuance of a final order.

(3) For the purposes of subsection (2) of this section, "curbstoning" means a person or firm engaged in buying and offering for sale, or buying and selling, five or more vehicles that are each less than thirty years old in a twelve-month period without holding a vehicle dealer license. For the purpose of subsections (1) and (2) of this section, "curbstoning" does not include the sale of equipment or vehicles used in farming as defined in RCW 46.04.183 and sold by a farmer as defined in RCW 46.04.182.

Sec. 2. RCW 46.70.028 and 1989 c 337 s 13 are each amended to read as follows:

Dealers who transact dealer business by consignment shall obtain a consignment contract for sale and shall comply with applicable provisions of chapter 46.70 RCW. The dealer shall place all funds received from the sale of the consigned vehicle in a trust account until the sale is completed, except that the dealer shall pay any outstanding liens against the vehicle from these funds. Where title has been delivered to the purchaser, the dealer shall pay the amount due a consignor within ten days after the sale. However, in the case of a consignment from a licensed vehicle dealer from any state, the wholesale auto auction shall pay the consignor within twenty days.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 6, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 132

[Substitute Senate Bill 6260]

METHAMPHETAMINE MANUFACTURE—CHILDREN PRESENT—PENALTIES

AN ACT Relating to manufacture of a controlled substance with children present; reenacting and amending RCW 9.94A.310; adding a new section to chapter 9.94A RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9.94A RCW to read as follows:

In a criminal case where:

(1) The defendant has been convicted of (a) manufacture of a controlled substance under RCW 69.50.401(a) relating to manufacture of methamphetamine; or (b) possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine, as defined in RCW 69.50.440; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person under the age of eighteen was present in or upon the premises of manufacture; the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation.

Sec. 2. RCW 9.94A.310 and 1999 c 352 s 2 and 1999 c 324 s 3 are each reenacted and amended to read as follows:

(1) **TABLE I**
Sentencing Grid

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XVI	Life Sentence without Parole/Death Penalty									
XV	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
XIV	14y4m 123- 220	15y4m 134- 234	16y2m 144- 244	17y 154- 254	17y11m 165- 265	18y9m 175- 275	20y5m 195- 295	22y2m 216- 316	25y7m 257- 357	29y 298- 397
XIII	12y 123- 164	13y 134- 178	14y 144- 192	15y 154- 205	16y 165- 219	17y 175- 233	19y 195- 260	21y 216- 288	25y 257- 342	29y 298- 397
XII	9y 93- 123	9y11m 102- 136	10y9m 111- 147	11y8m 120- 160	12y6m 129- 171	13y5m 138- 184	15y9m 162- 216	17y3m 178- 236	20y3m 209- 277	23y3m 240- 318
XI	7y6m 78- 102	8y4m 86- 114	9y2m 95- 125	9y11m 102- 136	10y9m 111- 147	11y7m 120- 158	14y2m 146- 194	15y5m 159- 211	17y11m 185- 245	20y5m 210- 280
X	5y 51- 68	5y6m 57- 75	6y 62- 82	6y6m 67- 89	7y 72- 96	7y6m 77- 102	9y6m 98- 130	10y6m 108- 144	12y6m 129- 171	14y6m 149- 198

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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	2-	3-	4-	12+-	14-	17-	22-	33-	43-
	Days	6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	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 July 23, 1995, 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 is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses,

regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9A.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 July 23, 1995, 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 run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9A.150(4).

(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, drive-by shooting, 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 9A.030. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the presumptive sentence for felony crimes committed after July 23, 1995, 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.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 is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. 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 sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) 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) 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) 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 July 23, 1995, 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 run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9A.150(4).

(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, drive-by shooting, 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 9A.030. If the addition of a deadly weapon enhancement increases the

sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(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 determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(I) (i) or (ii) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(I) (iii), (iv), and (v);

(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.

(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 or section 1 of this act.

(7) An additional two years shall be added to the presumptive sentence for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

Passed the Senate February 15, 2000.

Passed the House March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 133

[Senate Bill 5739]

DEATH CERTIFICATES

AN ACT Relating to certificates of death or fetal death; and amending RCW 70.58.170 and 70.58.180.

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

Sec. 1. RCW 70.58.170 and 1979 ex.s. c 162 s 1 are each amended to read as follows:

The funeral director or person in charge of interment shall file the certificate of death or fetal death. In preparing such certificate, the funeral director or person

in charge of interment shall obtain and enter on the certificate such personal data as the certificate requires from the person or persons best qualified to supply them. He or she shall present the certificate of death to the physician, physician's assistant, or advanced registered nurse practitioner last in attendance upon the deceased, or, if the deceased died without medical attendance, to the health officer, coroner, or prosecuting attorney having jurisdiction, who shall thereupon certify the cause of death according to his or her best knowledge and belief and shall sign the certificate of death or fetal death within two days after being presented with the certificate unless good cause for not signing the certificate within the two days can be established. He or she shall present the certificate of fetal death to the physician, physician's assistant, advanced registered nurse practitioner, midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data pertaining thereto as he or she can furnish.

Sec. 2. RCW 70.58.180 and 1961 ex.s. c 5 s 14 are each amended to read as follows:

If the death occurred without medical attendance, the funeral director or person in charge of interment shall notify the coroner, or prosecuting attorney if there is no coroner in the county. If the circumstances suggest that the death or fetal death was caused by unlawful or unnatural causes or if there is no local health officer with jurisdiction, the coroner, or if none, the prosecuting attorney shall complete and sign the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death. In case of any death without medical attendance in which there is no suspicion of death from unlawful or unnatural causes, the local health officer or his or her deputy, the coroner and if none, the prosecuting attorney, shall complete and sign the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death, and noting the cause of death without the holding of an inquest or performing of an autopsy or post mortem, but from statements of relatives, persons in attendance during the last sickness, persons present at the time of death or other persons having adequate knowledge of the facts.

The cause of death, the manner and mode in which death occurred, as noted by the coroner or if none, the prosecuting attorney or the health officer and incorporated in the death certificate filed with the bureau of vital statistics of the board of health shall be the legally accepted manner and mode by which the deceased came to his or her death and shall be the legally accepted cause of death.

Passed the Senate February 2, 2000.

Passed the House March 7, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 134

[Engrossed Senate Bill 6236]

EMPLOYMENT SECURITY—DATA SHARING

AN ACT Relating to the transfer of data for operational, evaluation, and research purposes; reenacting and amending RCW 50.13.060 and 42.17.310; creating new sections; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that individuals in need of employment and related services would be better served by integrating employment and training services to form a comprehensive network of state and local programs, called a one-stop career development system. Successful integration of employment and training services demands prompt and efficient exchange of information among service providers. The legislature further finds that efficient operation of state programs and their evaluation demand at times information held by the employment security department. Current restrictions on information exchange hamper this coordination, resulting in increased administrative costs, reduced levels of service, and fewer positive outcomes than could otherwise be achieved.

Sec. 2. RCW 50.13.060 and 1997 c 409 s 605 and 1997 c 58 s 1004 are each reenacted and amended to read as follows:

(I) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned

individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1)(c). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chapter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied. Information provided by the

department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial management, and other governmental entities with oversight or evaluation responsibilities for the program (shall have access to employer wage information on clients in the program whose names and social security numbers are provided to the department) in accordance with RCW 43.20A.080. The confidential information provided by the department shall remain the property of the department and may be used by the authorized requesting agencies only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services (is), the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from public inspection and copying under RCW 42.17.310.

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(11)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of work force programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The

transfer of information under contracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the department and whose information will be shared under (a) of this subsection (11) must be notified that his or her private and confidential information in the department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-stop partners and the department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under contract and is not subject to disclosure under RCW 42.17.310; and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the department's receipt of the application for services. A one-stop representative must be available to answer specific questions regarding the nature, extent, and purpose for which the information may be shared.

(12) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state agencies only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section.

(13) The misuse or unauthorized release of records or information by any person or organization to which access is permitted by this chapter subjects the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund.

The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section.

Sec. 3. RCW 42.17.310 and 1999 c 326 s 3, 1999 c 290 s 1, and 1999 c 215 s 1 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 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, computer source code or object code, 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, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 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, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(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)) 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(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.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such

information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(tt) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION. Sec. 4. 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 inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must 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. 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 Senate March 6, 2000.

Passed the House March 3, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 135

[Engrossed Substitute Senate Bill 6389]

JUVENILE COURT JURISDICTION—DEPENDENCY PROCEEDINGS

AN ACT Relating to court jurisdiction over permanency planning matters in dependency proceedings; amending RCW 26.10.030 and 13.34.145; reenacting and amending RCW 13.04.030; and adding a new section to chapter 13.34 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 13.34 RCW to read as follows:

(1) The court hearing the dependency petition may hear and determine issues related to chapter 26.10 RCW in a dependency proceeding as necessary to facilitate a permanency plan for the child or children as part of the dependency disposition order or a dependency review order or as otherwise necessary to implement a permanency plan of care for a child. The parents, guardians, or legal custodian of the child must agree, subject to court approval, to establish a permanent custody order. This agreed order may have the concurrence of the other parties to the dependency including the supervising agency, the guardian ad litem of the child, and the child if age twelve or older, and must also be in the best interests of the child. If the petitioner for a custody order under chapter 26.10 RCW is not a party to the dependency proceeding, he or she must agree on the record or by the filing of a declaration to the entry of a custody order. Once an order is entered under chapter 26.10 RCW, and the dependency petition dismissed, the department shall not continue to supervise the placement.

(2) Any court order determining issues under chapter 26.10 RCW is subject to modification upon the same showing and standards as a court order determining Title 26 RCW issues.

(3) Any order entered in the dependency court establishing or modifying a permanent legal custody order under chapter 26.10 RCW shall also be filed in the chapter 26.10 RCW action by the prevailing party. Once filed, any order establishing or modifying permanent legal custody shall survive dismissal of the dependency proceeding.

Sec. 2. RCW 13.04.030 and 1997 c 386 s 17, 1997 c 341 s 3, and 1997 c 338 s 7 are each reenacted and amended to read as follows:

(1) Except as provided in this section, the juvenile courts in 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 out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil 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;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil 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, and no guardian ad litem is required in any such proceeding due to the juvenile's age: 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;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in RCW 13.04.0301, or

(v) 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;

(B) A violent offense as defined in RCW 9.94A.030 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;

(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;

(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or

(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

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 under (e)(v) of this subsection, 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;

(h) Relating to court validation of a voluntary consent to 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;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(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) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW as provided for in section 1 of this act.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.

Sec. 3. RCW 26.10.030 and 1998 c 130 s 4 are each amended to read as follows:

(1) Except as authorized for proceedings brought under chapter 13.34 RCW, or chapter 26.50 RCW in district or municipal courts, a child custody proceeding is commenced in the superior court by a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian. In proceedings in which the juvenile court has not exercised concurrent jurisdiction and prior to a child custody hearing, the court shall determine if the child is the subject of a pending dependency action.

(2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

Sec. 4. RCW 13.34.145 and 1999 c 267 s 17 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; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; a responsible living skills program; 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. 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.

(d) For purposes related to permanency planning:

(i) "Guardianship" means a dependency guardianship pursuant to this chapter, a legal guardianship pursuant to chapter 11.88 RCW, or equivalent laws of another state or a federally recognized Indian tribe.

(ii) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(iii) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or of a federally recognized Indian tribe.

(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 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, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(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 months, as provided in subsection (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, guardianship order, or permanent custody order is entered, or the dependency is dismissed.

(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.

(6) At the permanency planning hearing, the court shall enter findings as required by RCW 13.34.130(7) 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 and 13.34.130(7). 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.

(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(7), and the court shall determine the need for continued intervention.

(8) ~~((Continued)) The juvenile court ((jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or))~~ may hear a petition for permanent legal custody when ((:)) (a) the court has ordered implementation of a permanency plan that includes ~~((legal guardianship or))~~ permanent legal custody, and (b) the party pursuing the ~~((legal guardianship or))~~ permanent legal custody is the party identified in the permanency plan as the prospective legal ~~((guardian or))~~ custodian. During the pendency of such proceeding, juvenile court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) 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.

~~((+))~~ (11) 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(7), 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.

~~((11))~~ (12) 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.

~~((12))~~ (13) 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.

~~((13))~~ (14) 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 February 11, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.

CHAPTER 136

[Substitute Senate Bill 6115]

MOTOR VEHICLES—PROPERTY TAX EXEMPTION

AN ACT Relating to the reinstatement of the exemption from property tax for motor vehicles, travel trailers, and campers eliminated by Initiative 695; adding a new section to chapter 84.36 RCW; creating a new section; 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 84.36 RCW to read as follows:

(1) For the purposes of this section, the following definitions apply:

(a) "Motor vehicle" means all motor vehicles, trailers, and semitrailers used, or of the type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads and facilities for human habitation; but shall not include (i) vehicles carrying exempt licenses; (ii) dock and warehouse tractors and their cars or trailers, lumber carriers of the type known as spiders, and all other automotive equipment not designed primarily for use upon public streets or highways; (iii) motor vehicles or their trailers used entirely upon private property; (iv) mobile homes as defined in RCW 46.04.302; or (v) motor

vehicles owned by nonresident military personnel of the armed forces of the United States stationed in the state of Washington, provided personnel were also nonresident at the time of their entry into military service.

(b) "Travel trailer" has the meaning given in RCW 46.04.623. However, if a park trailer, as defined in RCW 46.04.622, has substantially lost its identity as a mobile unit by virtue of its being permanently sited in location and placed on a foundation of either posts or blocks with connections with sewer, water, or other utilities for the operation of installed fixtures and appliances, it will be considered real property and will be subject to ad valorem property taxation imposed in accordance with this title, including the provisions with respect to omitted property, except that a park trailer located on land not owned by the owner of the park trailer will be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(c) "Camper" has the meaning given in RCW 46.04.085.

(2) Motor vehicles, travel trailers, and campers are exempt from property taxation.

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

NEW SECTION. Sec. 3. This act applies retroactively to January 1, 2000.

Passed the Senate January 19, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 137

[Substitute Senate Bill 5518]

COMMUNITY OUTDOOR ATHLETIC FACILITIES

AN ACT Relating to community outdoor athletic facilities; amending RCW 43.99N.060; and adding a new section to chapter 43.99N RCW.

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

Sec. 1. RCW 43.99N.060 and 1997 c 220 s 214 (Referendum Bill No. 48) are each amended to read as follows:

(1) The stadium and exhibition center account is created in the custody of the state treasurer. All receipts from the taxes imposed under RCW 82.14.0494 and distributions under RCW 67.70.240(5) shall be deposited into the account. Only the director of the office of financial management or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. An appropriation is not required for expenditures from this account.

(2) Until bonds are issued under RCW 43.99N.020, up to five million dollars per year beginning January 1, 1999, shall be used for the purposes of subsection

(3)(b) of this section, all remaining moneys in the account shall be transferred to the public stadium authority, created under RCW 36.102.020, to be used for public stadium authority operations and development of the stadium and exhibition center.

(3) After bonds are issued under RCW 43.99N.020, all moneys in the stadium and exhibition center account shall be used exclusively for the following purposes in the following priority:

(a) On or before June 30th of each year, the office of financial management shall accumulate in the stadium and exhibition center account an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued under RCW 43.99N.020;

(b) An additional reserve amount not in excess of the expected average annual principal and interest requirements of bonds issued under RCW 43.99N.020 shall be accumulated and maintained in the account, subject to withdrawal by the state treasurer at any time if necessary to meet the requirements of (a) of this subsection, and, following any withdrawal, reaccumulated from the first tax revenues and other amounts deposited in the account after meeting the requirements of (a) of this subsection; and

(c) The balance, if any, shall be transferred to the youth athletic facility ((grant)) account under subsection (4) of this section.

Any revenues derived from the taxes authorized by RCW 36.38.010(5) and 36.38.040 or other amounts that if used as provided under (a) and (b) of this subsection would cause the loss of any tax exemption under federal law for interest on bonds issued under RCW 43.99N.020 shall be deposited in and used exclusively for the purposes of the youth athletic facility ((grant)) account and shall not be used, directly or indirectly, as a source of payment of principal of or interest on bonds issued under RCW 43.99N.020, or to replace or reimburse other funds used for that purpose.

(4) Any moneys in the stadium and exhibition center account not required or permitted to be used for the purposes described in subsection (3)(a) and (b) of this section shall be deposited in the youth athletic facility ((grant)) account hereby created in the state treasury. Expenditures from the account may be used only for purposes of grants or loans to cities, counties, and qualified nonprofit organizations for ((youth)) community outdoor athletic facilities. Only the director of the interagency committee for outdoor recreation or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The athletic facility grants or loans may be used for acquiring, developing, equipping, maintaining, and improving ((youth-or)) community outdoor athletic facilities. Funds shall be divided equally between the development of new community outdoor athletic facilities, the improvement of existing community outdoor athletic facilities, and the maintenance of existing community outdoor athletic facilities. Cities, counties, and qualified nonprofit organizations must submit proposals for grants or loans from the account. To the extent that

funds are available, cities, counties, and qualified nonprofit organizations must meet eligibility criteria as established by the director of the interagency committee for outdoor recreation. The grants and loans shall be awarded on a competitive application process and the amount of the grant or loan shall be in proportion to the population of the city or county for where the ~~((youth))~~ community outdoor athletic facility is located. Grants or loans awarded in any one year need not be distributed in that year. The director of the interagency committee for outdoor recreation may expend up to one and one-half percent of the moneys deposited in the account created in this subsection for administrative purposes.

NEW SECTION. Sec. 2. A new section is added to chapter 43.99N RCW to read as follows:

The Washington state interagency committee for outdoor recreation, in consultation with the community outdoor athletic fields advisory council, shall establish the terms and conditions of repayment and interest, based on financial considerations for any loans made under this section. Loans made under this section shall be low or no interest.

Passed the Senate March 6, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 138

[Engrossed Substitute Senate Bill 6347]

SMALL WORKS ROSTERS

AN ACT Relating to small works rosters; amending RCW 39.04.155, 39.04.010, 39.04.200, 28A.335.190, 28B.10.350, 35.22.620, 35.23.352, 36.32.235, 36.32.250, 36.77.075, 52.14.110, 53.08.120, 54.04.070, 57.08.050, and 70.44.140; adding new sections to chapter 39.04 RCW; adding a new section to chapter 35.82 RCW; creating new sections; and repealing RCW 28B.10.355, 35.82.075, and 39.04.150.

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

NEW SECTION. Sec. 1. The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property.

PART I - COMMON SMALL WORKS ROSTER PROCEDURE

Sec. 101. RCW 39.04.155 and 1998 c 278 s 12 are each amended to read as follows:

(1) This section provides ~~((a))~~ uniform ~~((process))~~ small works roster provisions to award contracts for ~~((public works projects by those municipalities that are authorized to use a small works roster in lieu of the requirements for formal sealed bidding. The state statutes governing a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded~~

~~under this process, and may include other matters concerning the small works roster process, for the municipality))~~ construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less.

(2) ~~((Such municipalities))~~ A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least ((twice)) once a year, the ((municipality)) state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

~~((The governing body of the municipality shall establish a))~~ (3) A state agency establishing a small works roster or rosters shall adopt rules implementing this section. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this section. Procedures included in rules adopted by the department of general administration in implementing this section must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this section.

(4) Procedures shall be established for securing telephone ((or)), written, or electronic quotations from ((the)) contractors on the ((general)) appropriate small works roster((, or a specific small works roster for the appropriate category of work,)) to assure that a competitive price is established and to award contracts to

the lowest responsible bidder, as defined in RCW 43.19.1911. ~~((Such))~~ Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This section does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. ~~((Whenever possible at least five contractors shall be invited to submit bids. Once a contractor has been afforded an opportunity to submit a proposal, that contractor shall not be offered another opportunity until all other appropriate contractors on the small works roster have been afforded an opportunity to submit a proposal on a contract. Proposals))~~ Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government, other than a port district, that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (a) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (b) mailing a notice to these contractors; or (c) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection, "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(5) A contract awarded from a small works roster under this section need not be advertised.

(6) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(7) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.

(8) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

Sec. 102. RCW 39.04.010 and 1997 c 220 s 402 are each amended to read as follows:

The term state shall include the state of Washington and all departments, supervisors, commissioners and agencies thereof.

The term municipality shall include every city, county, town, district or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

The term public work shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with the provisions of RCW 39.12.020. The term does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid. However, a contract which is awarded from a small works roster (~~under the authority of RCW 39.04.150, 35.22.620, 28B.10.355, 35.82.075, and 57.08.050~~) need not be advertised.

Sec. 103. RCW 39.04.200 and 1993 c 198 s 3 are each amended to read as follows:

Any (~~municipality that utilizes the small works roster process established in RCW 39.04.155 to award contracts for public works projects, or~~) local government using the uniform process established in RCW 39.04.190 to award contracts for purchases(;) must post a list of the contracts awarded under ((RCW 39.04.155 and 39.04.190)) that process at least once every two months. Any state agency or local government using the small works roster process established in RCW 39.04.155 to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property must make available a list of the contracts awarded under that process at least once every year. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.

NEW SECTION. Sec. 104. A new section is added to chapter 39.04 RCW to read as follows:

The department of community, trade, and economic development, in cooperation with the municipal research and services center, shall prepare a small works roster manual and periodically notify the different types of local government authorized to use a small works roster process about this authority.

NEW SECTION. Sec. 105. A new section is added to chapter 39.04 RCW to read as follows:

The department of community development, in cooperation with the municipal research and services center, shall prepare a small works roster manual and periodically notify the different types of local government authorized to use a small works roster process about this authority.

NEW SECTION. Sec. 106. A report on the use of the small works roster shall be made to the independent oversight committee established under RCW 39.10.110 prior to the 2003 legislative session.

PART II - REFERENCES TO SMALL WORKS ROSTER PROCEDURE

Sec. 201. RCW 28A.335.190 and 1995 1st sp.s. c 10 s 3 are each amended to read as follows:

(1) When, in the opinion of the board of directors of any school district, the cost of any furniture, supplies, equipment, building, improvements, or repairs, or other work or purchases, except books, will equal or exceed the sum of fifty thousand dollars, complete plans and specifications for such work or purchases shall be prepared and notice by publication given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks, of the intention to receive bids therefor and that specifications and other information may be examined at the office of the board or any other officially designated location: **PROVIDED,** That the board without giving such notice may make improvements or repairs to the property of the district through the shop and repair department of such district when the total of such improvements or repair does not exceed the sum of (a) fifteen thousand dollars, for districts with fifteen thousand five hundred or more full-time equivalent students; or (b) for districts with fewer than fifteen thousand five hundred full-time equivalent students, fifteen thousand dollars if more than one craft or trade is involved with the school district improvement or repair, or ten thousand dollars if a single craft or trade is involved with the school district improvement or repair. The cost of any public work, improvement or repair for the purposes of this section shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence. The bids shall be in writing and shall be opened and read in public on the date and in the place named in the notice and after being opened shall be filed for public inspection.

(2) Every purchase of furniture, equipment or supplies, except books, the cost of which is estimated to be in excess of fifteen thousand dollars, shall be on a competitive basis. The board of directors shall establish a procedure for securing

telephone and/or written quotations for such purchases. Whenever the estimated cost is from fifteen thousand dollars up to fifty thousand dollars, the procedure shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal. Whenever the estimated cost is in excess of fifty thousand dollars, the public bidding process provided in subsection (1) of this section shall be followed.

(3) Every building, improvement, repair or other public works project, the cost of which is estimated to be in excess of (a) fifteen thousand dollars, for districts with fifteen thousand five hundred or more full-time equivalent students; or (b) for districts with fewer than fifteen thousand five hundred full-time equivalent students, fifteen thousand dollars if more than one craft or trade is involved with the school district improvement or repair, or ten thousand dollars if a single craft or trade is involved with the school district improvement or repair, shall be on a competitive bid process. ~~((All such projects estimated to be less than fifty thousand dollars may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of directors shall establish a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster who have indicated the capability of performing the kind of public works being contracted. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised at least once each year by publishing notice of such opportunity in at least one newspaper of general circulation in the district. Responsible contractors shall be added to the list at any time they submit a written request.))~~ Whenever the estimated cost of a public works project is fifty thousand dollars or more, the public bidding process provided in subsection (1) of this section shall be followed unless the contract is let using the small works roster process in RCW 39.04.155 or under any other procedure authorized for school districts. One or more school districts may authorize an educational service district to establish and operate a small works roster for the school district under the provisions of RCW 39.04.155.

(4) The contract for the work or purchase shall be awarded to the lowest responsible bidder as defined in RCW 43.19.1911 but the board may by resolution reject any and all bids and make further calls for bids in the same manner as the original call. On any work or purchase the board shall provide bidding information to any qualified bidder or the bidder's agent, requesting it in person.

(5) In the event of any emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board declaring the existence of such an emergency and reciting the facts constituting the same, the board may waive the requirements of this section with

reference to any purchase or contract: PROVIDED, That an "emergency", for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of the school district in the absence of prompt remedial action.

(6) This section does not apply to the direct purchase of school buses by school districts and educational services in accordance with RCW 28A.160.195.

Sec. 202. RCW 28B.10.350 and 1993 c 379 s 109 are each amended to read as follows:

(1) When the cost to The Evergreen State College, any regional university, or state university, of any building, construction, renovation, remodeling, or demolition other than maintenance or repairs will equal or exceed the sum of twenty-five thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications: PROVIDED, That when the estimated cost of such building, construction, renovation, remodeling, or demolition equals or exceeds the sum of twenty-five thousand dollars, such project shall be deemed a public works and "the prevailing rate of wage," under chapter 39.12 RCW shall be applicable thereto: PROVIDED FURTHER, That when such building, construction, renovation, remodeling, or demolition involves one trade or craft area and the estimated cost exceeds ten thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids, and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications. This subsection shall not apply when a contract is awarded by the small works roster procedure authorized in RCW (~~28B.10.355~~) 39.04.155 or under any other procedure authorized for an institution of higher education.

(2) The Evergreen State College, any regional university, or state university may require a project to be put to public bid even when it is not required to do so under subsection (1) of this section.

(3) Where the estimated cost to The Evergreen State College, any regional university, or state university of any building, construction, renovation, remodeling, or demolition is less than twenty-five thousand dollars or the contract is awarded by the small works roster procedure authorized in RCW (~~28B.10.355~~) 39.04.155, the publication requirements of RCW 39.04.020 shall be inapplicable.

(4) In the event of any emergency when the public interest or property of The Evergreen State College, regional university, or state university would suffer material injury or damage by delay, the president of such college or university may declare the existence of such an emergency and reciting the facts constituting the same may waive the requirements of this section with reference to any contract in order to correct the condition causing the emergency: PROVIDED, That an "emergency," for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of such college or university

in the absence of prompt remedial action or a condition which immediately impairs the institution's ability to perform its educational obligations.

Sec. 203. RCW 35.22.620 and 1998 c 278 s 2 are each amended to read as follows:

(1) As used in this section, the term "public works" means as defined in RCW 39.04.010.

(2) A first class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first class city has a county perform for it under RCW 35.77.020 shall be included within this ten percent limitation.

If a first class city has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(3) In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population in excess of one hundred fifty thousand shall not have public employees perform a public works project in excess of fifty thousand dollars if more than a single craft or trade is involved with the public works project, or a public works project in excess of twenty-five thousand dollars if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population of one hundred fifty thousand or less shall not have public employees perform a public works project in excess of thirty-five thousand dollars if more than one craft or trade is involved with the public works project, or a public works project in excess of twenty thousand dollars if only a single craft or trade is

involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

(4) In addition to the accounting and record-keeping requirements contained in RCW 39.04.070, every first class city annually shall prepare a report for the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below ten percent of the total construction budget. However, if a city budgets on a biennial basis, this annual report shall indicate the amount of public works that is performed by public employees within the current biennial period that is above or below ten percent of the total biennial construction budget.

~~((After September 1, 1987,))~~ Each first class city with a population of one hundred fifty thousand or less shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(6) The competitive bidding requirements of this section may be waived by the city legislative authority pursuant to RCW 39.04.280 if an exemption contained within that section applies to the work or contract.

(7) In lieu of the procedures of subsections (2) and (6) of this section, a first class city may ~~((use))~~ let contracts using the small works roster process in RCW 39.04.155 ~~((to award contracts for public works projects with an estimated value of one hundred thousand dollars or less))~~.

Whenever possible, the city shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(8) The allocation of public works projects to be performed by city employees shall not be subject to a collective bargaining agreement.

(9) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(10) Nothing in this section shall prohibit any first class city from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

Sec. 204. RCW 35.23.352 and 1998 c 278 s 3 are each amended to read as follows:

(1) Any second class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids

therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of thirty thousand dollars if more than one craft or trade is involved with the public works, or twenty thousand dollars if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in accordance with RCW 39.08.030. If the bidder fails to enter into the contract in accordance with his or her bid and furnish a bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

If no bid is received on the first call the council or commission may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, material or equipment and perform the work or improvement by day labor.

(2) The allocation of public works projects to be performed by city or town employees shall not be subject to a collective bargaining agreement.

(3) In lieu of the procedures of subsection (1) of this section, a second class city or a town may ~~((use))~~ let contracts using the small works roster process provided in RCW 39.04.155 ~~((to award public works contracts with an estimated value of one hundred thousand dollars or less))~~.

Whenever possible, the city or town shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(4) The form required by RCW 43.09.205 shall be to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of the materials, equipment, supplies, and labor on that construction project.

(6) Any purchase of supplies, material, or equipment, except for public work or improvement, where the cost thereof exceeds seven thousand five hundred dollars shall be made upon call for bids.

(7) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper of general circulation in the city or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

(8) For advertisement and formal sealed bidding to be dispensed with as to purchases with an estimated value of fifteen thousand dollars or less, the council or commission must authorize by resolution, use of the uniform procedure provided in RCW 39.04.190.

(9) The city or town legislative authority may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(10) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(11) Nothing in this section shall prohibit any second class city or any town from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

NEW SECTION. Sec. 205. A new section is added to chapter 35.82 RCW to read as follows:

A housing authority may establish and use a small works roster for awarding contracts under RCW 39.04.155.

Sec. 206. RCW 36.32.235 and 1997 c 220 s 401 are each amended to read as follows:

(1) In each county with a population of one million or more which by resolution establishes a county purchasing department, the purchasing department shall enter into leases of personal property on a competitive basis and purchase all supplies, materials, and equipment on a competitive basis, for all departments of the county, as provided in this chapter and chapter 39.04 RCW, except that the county purchasing department is not required to make purchases that are paid from the county road fund or equipment rental and revolving fund.

(2) As used in this section, "public works" has the same definition as in RCW 39.04.010.

(3) Except as otherwise specified in this chapter or in chapter 36.77 RCW, all counties subject to these provisions shall contract on a competitive basis for all public works after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection.

(4) An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper is sufficient. Such advertisements shall be published at least once at least thirteen days prior to the last date upon which bids will be received.

(5) The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed.

(6) The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law.

(7) If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. 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.

(8) As limited by subsection (10) of this section, a county subject to these provisions may have public works performed by county employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period.

Whenever a county subject to these provisions has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works except emergency work under subsection (12) of this section within that budget period shall be done by contract pursuant to public notice and call for competitive bids as specified in subsection (3) of this section. The state auditor shall report to the state treasurer any county subject to these provisions that exceeds this amount and the extent to which the county has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(9) If a county subject to these provisions has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that county in its next budget period. Ten percent of the motor vehicle fuel tax distributions to that county shall be withheld if two years after the year in which the excess amount of work occurred, the county has failed to so reduce the amount of public works that it has performed by public employees. The amount withheld shall be distributed to the county when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been reduced as required.

(10) In addition to the percentage limitation provided in subsection (8) of this section, counties subject to these provisions containing a population of one million or more shall not have public employees perform a public works project in excess of seventy thousand dollars if more than a single craft or trade is involved with the public works project, or a public works project in excess of twenty-five thousand dollars if only a single craft or trade is involved with the public works project. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by public employees on a single project.

The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(11) In addition to the accounting and recordkeeping requirements contained in chapter 39.04 RCW, any county which uses public employees to perform public works projects under RCW 36.32.240(1) shall prepare a year-end report to be submitted to the state auditor indicating the total dollar amount of the county's public works construction budget and the total dollar amount for public works projects performed by public employees for that year.

The year-end report submitted pursuant to this subsection to the state auditor shall be in accordance with the standard form required by RCW 43.09.205.

(12) Notwithstanding any other provision in this section, counties may use public employees without any limitation for emergency work performed under an emergency declared pursuant to RCW 36.32.270, and any such emergency work shall not be subject to the limitations of this section. Publication of the description and estimate of costs relating to correcting the emergency may be made within seven days after the commencement of the work. Within two weeks of the finding that such an emergency existed, the county legislative authority shall adopt a resolution certifying the damage to public facilities and costs incurred or anticipated relating to correcting the emergency. Additionally this section shall not apply to architectural and engineering or other technical or professional services performed by public employees in connection with a public works project.

(13) In lieu of the procedures of subsections (3) through (11) of this section, a county may ~~((use a))~~ let contracts using the small works roster process ~~((and award contracts for public works projects with an estimated value of ten thousand dollars up to one hundred thousand dollars as))~~ provided in RCW 39.04.155.

Whenever possible, the county shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(14) The allocation of public works projects to be performed by county employees shall not be subject to a collective bargaining agreement.

(15) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(16) Nothing in this section prohibits any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(17) This section does not apply to contracts between the public stadium authority and a team affiliate under RCW 36.102.060(4), or development agreements between the public stadium authority and a team affiliate under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

Sec. 207. RCW 36.32.250 and 1996 c 18 s 3 are each amended to read as follows:

No contract for public works may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are

to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper shall be sufficient. Such advertisements shall be published at least once at least thirteen days prior to the last date upon which bids will be received. The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed. The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law. If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. In the letting of any contract for public works involving less than ten thousand dollars, advertisement and competitive bidding may be dispensed with on order of the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

~~((For advertisement and competitive bidding to be dispensed with as to public works projects with an estimated value of ten thousand dollars up to one hundred thousand dollars, a county must use a small works roster process as provided in RCW 39.04.155.))~~

As an alternative to requirements under this section, a county may let contracts using the small works roster process under RCW 39.04.155.

This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

Sec. 208. RCW 36.77.075 and 1991 c 363 s 81 are each amended to read as follows:

In lieu of the procedure for awarding contracts that is provided in RCW 36.77.020 through 36.77.040, a county may award contracts for public works projects on county roads ~~((with an estimated value of one hundred thousand dollars or less using a small works roster process as provided in))~~ using the small works roster process under RCW 39.04.155.

Sec. 209. RCW 52.14.110 and 1998 c 278 s 5 are each amended to read as follows:

Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

(1) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of four thousand five hundred dollars. However, whenever the estimated cost does not exceed ten thousand dollars, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;

(2) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of two thousand five hundred dollars, which includes the costs of labor, material, and equipment ~~((However, whenever the estimated cost does not exceed ten thousand dollars, the commissioner may by resolution use the small works roster process provided in))~~;

(3) Contracts using the small works roster process under RCW 39.04.155; and

~~((3))~~ (4) Any contract for purchases or public work pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

Sec. 210. RCW 53.08.120 and 1999 c 29 s 1 are each amended to read as follows:

All material required by a port district may be procured in the open market or by contract and all work ordered may be done by contract or day labor. All such contracts for work, the estimated cost of which exceeds two hundred thousand dollars, shall be let at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for sealed bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

~~((Each port district shall maintain a small works roster, as provided in))~~
However, a port district may let contracts using the small works roster process under RCW 39.04.155~~((, and may use the small works roster process to award contracts))~~ in lieu of calling for sealed bids ~~((whenever work is done by contract, the estimated cost of which is two hundred thousand dollars or less))~~. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the

public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster.

~~((A report on the effectiveness of the change in the bid limit will be made to the alternative works construction methods oversight committee prior to the 2003 legislative session.))~~

Sec. 211. RCW 54.04.070 and 1998 c 278 s 7 are each amended to read as follows:

Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of five thousand dollars, exclusive of sales tax shall be by contract: PROVIDED, That a district may make purchases of the same kind of items of materials, equipment and supplies not exceeding five thousand dollars in any calendar month without a contract, purchasing any excess thereof over five thousand dollars by contract. Any work ordered by a district commission, the estimated cost of which is in excess of ten thousand dollars exclusive of sales tax, shall be by contract, except that a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. Prudent utility management means performing work with regularly employed personnel utilizing material of a worth not exceeding fifty thousand dollars in value without a contract: PROVIDED, That such limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment purchased or acquired and used as one unit of a project. Before awarding such a contract, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for the work or materials; plans and specifications of which shall at the time of the publication be on file at the office of the district subject to public inspection. Any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

~~((Notwithstanding any other provisions herein, all contract projects, the estimated cost of which is less than one hundred thousand dollars, may be awarded to a contractor using the small works roster process provided in RCW 39.04.155.))~~
All contract projects equal to or in excess of one hundred thousand dollars shall be let by competitive bidding unless the public utility district lets contracts using the small works roster process under RCW 39.04.155.

Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file

a statement of such price supported by the sworn affidavit of one member of the commission and may consider such price as a bid without a deposit or bond.

The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

Sec. 212. RCW 57.08.050 and 1999 c 153 s 9 are each amended to read as follows:

(1) All work ordered, the estimated cost of which is in excess of five thousand dollars, shall be let by contract ~~((All contract projects, the estimated cost of which is in excess of five thousand dollars and less than fifty thousand dollars, may be awarded to a contractor using the small works roster process provided in RCW 39.04.155. The board of commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. All contract projects equal to or in excess of fifty thousand dollars shall be let by))~~ and competitive bidding. Before awarding any such contract the board of commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. The board of commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash,

or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to requirements under subsection (1) of this section, a water-sewer district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of ten thousand dollars, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than fifty thousand dollars shall be made using the process provided in RCW 39.04.190. Any purchase of materials, supplies, or equipment with an estimated cost of fifty thousand dollars or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

~~((3))~~ (4) The board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

Sec. 213. RCW 70.44.140 and 1999 c 99 s 1 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: PROVIDED, HOWEVER, That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, HOWEVER, That no contract shall be let in excess of the estimated cost of the materials or work, or if, in the opinion of the commission, all bids are

unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders. If the contract is let, then all bid proposal security shall be returned to the bidders, except that of the successful bidder, which is retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) ~~((In lieu of the procedures of subsection (1) of this section, a public hospital district may use the contracting processes provided in RCW 39.04.155; however, public hospital districts may only use the small works roster process for projects estimated to cost less than fifty thousand dollars))~~ As an alternative to the requirements of subsection (1) of this section, a public hospital district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchases with an estimated cost of up to fifteen thousand dollars may be made using the process provided in RCW 39.04.190.

(4) The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

PART 111 - MISCELLANEOUS

NEW SECTION. **Sec. 301.** The following acts or parts of acts are each repealed:

(1) RCW 28B.10.355 (Public works projects—Small works roster—Rules—Procedures—Revisions) and 1993 c 379 s 110 & 1985 c 152 s 2;

(2) RCW 35.82.075 (Small works roster) and 1989 c 363 s 6; and

(3) RCW 39.04.150 (State agencies authorized to establish small works roster—Procedure for securing quotations—Rules) and 1998 c 278 s 11.

NEW SECTION. **Sec. 302.** Part headings used in this act are not any part of the law.

NEW SECTION. **Sec. 303.** (1) Section 104 of this act is null and void if Substitute Senate Bill No. 6396 or Substitute House Bill No. 2382 is enacted into law by June 30, 2000.

(2) Section 105 of this act takes effect only if Substitute Senate Bill No. 6396 or Substitute House Bill No. 2382 is enacted into law by June 30, 2000.

Passed the Senate February 15, 2000.
 Passed the House February 29, 2000.
 Approved by the Governor March 27, 2000.
 Filed in Office of Secretary of State March 27, 2000.

CHAPTER 139

[Senate Bill 6429]

STATE EMPLOYEES' SUGGESTION AWARDS AND INCENTIVE PAY

AN ACT Relating to state employees' suggestion awards and incentive pay; and amending RCW 41.60.015 and 41.60.150.

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

Sec. 1. RCW 41.60.015 and 1999 c 50 s 2 are each amended to read as follows:

(1) There is hereby created the productivity board, which may also be known as the employee involvement and recognition board. The board shall administer the employee suggestion program and the teamwork incentive program under this chapter.

(2) The board shall be composed of:

(a) The secretary of state who shall act as chairperson;

(b) The director of personnel appointed under the provisions of RCW 41.06.130 or the director's designee;

(c) The director of financial management or the director's designee;

(d) The director of general administration or the director's designee;

(e) Three persons with experience in administering incentives such as those used by industry, with the governor, lieutenant governor, and speaker of the house of representatives each appointing one person. The governor's appointee shall be a representative of an employee organization certified as an exclusive representative of at least one bargaining unit of classified employees(~~(-but no one organization may be represented for two consecutive terms));~~);

(f) ~~((One))~~ Two persons representing state agencies and institutions with employees subject to chapter 41.06 RCW, and one person representing those subject to chapter 28B.16 RCW, both appointed by the governor; and

(g) In addition, the governor and board chairperson may jointly appoint persons to the board on an ad hoc basis. Ad hoc members shall serve in an advisory capacity and shall not have the right to vote.

Members under subsection (2)(e) and (f) of this section shall be appointed to serve three-year terms.

Members of the board appointed pursuant to subsection (2)~~((f)-(e)))~~ (e) of this section may be compensated in accordance with RCW 43.03.240. Any board member who is not a state employee may be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

Sec. 2. RCW 41.60.150 and 1999 c 50 s 10 are each amended to read as follows:

Other than suggestion awards and incentive pay unit awards, agencies shall have the authority to recognize employees, either individually or as a class, for accomplishments including outstanding achievements, safety performance, longevity, outstanding public service, or service as employee suggestion evaluators and implementors. Recognition awards may not exceed two hundred dollars in value per award. Such awards may include, but not be limited to, cash or such items as pen and desk sets, plaques, pins, framed certificates, clocks, and calculators. Award costs shall be paid by the agency giving the award.

Passed the Senate February 15, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 140

[Substitute Senate Bill 5366]

EMPLOYMENT EXAMINATIONS—VETERANS SCORING CRITERIA

AN ACT Relating to veterans' scoring criteria in employment examinations; and amending RCW 41.04.010.

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

Sec. 1. RCW 41.04.010 and 1974 ex.s. c 170 s 1 are each amended to read as follows:

In all competitive examinations, unless otherwise provided (~~herein~~) in this section, to determine the qualifications of applicants for public offices, positions or employment, the state, and all of its political subdivisions and all municipal corporations, shall give a (~~preference~~) scoring criteria status to all veterans as defined in RCW 41.04.005, by adding to the passing mark, grade or rating only, based upon a possible rating of one hundred points as perfect a percentage in accordance with the following:

(1) Ten percent to a veteran who (~~is not receiving any veterans retirement payments and said~~) served during a period of war or in an armed conflict as defined in RCW 41.04.005 and does not receive military retirement. The percentage shall be (~~utilized in said veteran's~~) added to the passing mark, grade, or rating of competitive examinations (~~and not in any promotional examination~~) until (~~one of such examinations results in said~~) the veteran's first appointment (~~PROVIDED, That said~~). The percentage shall not be utilized in (~~any~~) promotional examinations;

(2) Five percent to a veteran who did not serve during a period of war or in an armed conflict as defined in RCW 41.04.005 or is receiving (~~any veterans retirement payments and said~~) military retirement. The percentage shall be (~~utilized in said veteran's~~) added to the passing mark, grade, or rating of competitive examinations (~~only and not in any promotional examination~~) until (~~one of such examinations results in said~~) the veteran's first appointment (~~PROVIDED, That said~~).

~~PROVIDED, That said~~). The percentage shall not be utilized in ((any)) promotional examinations;

(3) ~~Five percent to a veteran who((, after having previously received)) was called to active military service for one or more years from employment with the state or any of its political subdivisions or municipal corporations((, shall be called, or recalled, to active military service for a period of one year, or more, during any period of war, for his)).~~ The percentage shall be added to the first promotional examination only((, upon compliance with RCW 73.16.035 as it now exists or may hereafter be amended));

(4) ~~((There shall be no examination preferences other than those which have been specifically provided for above and all preferences above))~~ All veterans' scoring criteria specified in subsections (1), (2), and (3) of this section must be claimed ((by a veteran)) within ((eight)) fifteen years of the date of ((his)) release from active military service. This period may be extended for valid and extenuating reasons to include but not be limited to:

(a) Documented medical reasons beyond control of the veteran;

(b) United States department of veterans' affairs documented disabled veteran;

or

(c) Any veteran who has his or her employment terminated through no fault or action of his or her own and whose livelihood is adversely affected may seek scoring criteria employment consideration under this section.

Passed the Senate February 9, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 141

[Substitute Senate Bill 6589]

DOMESTIC WINERIES

AN ACT Relating to domestic wineries; and amending RCW 66.24.170.

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

Sec. 1. RCW 66.24.170 and 1997 c 321 s 3 are each amended to read as follows:

(1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a distributor and/or retailer of wine of its own production. Any winery operating as

a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail for off-premise consumption, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; and (c) a winery may not act as a distributor at any such additional location. Each additional location is deemed to be part of the winery license for the purpose of this title. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license.

Passed the Senate February 11, 2000.

Passed the House March 3, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 142

[Substitute Senate Bill 6812]

DOMESTIC BREWERS

AN ACT Relating to contract brewing by domestic brewers; and amending RCW 66.04.010 and 66.24.240.

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

Sec. 1. RCW 66.04.010 and 1997 c 321 § 37 are each amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(3) "Beer distributor" means a person who buys beer from a brewer or brewery located either within or beyond the boundaries of the state, beer importers, or

foreign produced beer from a source outside the state of Washington, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(4) "Beer importer" means a person or business within Washington who purchases beer from a United States brewery holding a certificate of approval (B5) or foreign produced beer from a source outside the state of Washington for the purpose of selling the same pursuant to this title.

(5) "Brewer" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(8) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(9) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(10) "Distiller" means a person engaged in the business of distilling spirits.

(11) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

~~(12)~~ "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

~~((+2))~~ (13) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

~~((+3))~~ (14) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

~~((+4))~~ (15) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

~~((+5))~~ (16) "Fund" means 'liquor revolving fund.'

~~((+6))~~ (17) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such

transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

~~((17))~~ (18) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

~~((18))~~ (19) "Imprisonment" means confinement in the county jail.

~~((19))~~ (20) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

~~((20))~~ (21) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

~~((21))~~ (22) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

~~((22))~~ (23) "Package" means any container or receptacle used for holding liquor.

~~((23))~~ (24) "Permit" means a permit for the purchase of liquor under this title.

~~((24))~~ (25) "Person" means an individual, copartnership, association, or corporation.

~~((25))~~ (26) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

~~((26))~~ (27) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

~~((27))~~ (28) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

~~((28))~~ (29) "Regulations" means regulations made by the board under the powers conferred by this title.

~~((29))~~ (30) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

~~((30))~~ (31) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

~~((31))~~ (32) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

~~((32))~~ (33) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

~~((33))~~ (34) "Store" means a state liquor store established under this title.

~~((34))~~ (35) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

~~((35))~~ (36) "Vendor" means a person employed by the board as a store manager under this title.

~~((36))~~ (37) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

~~((37))~~ (38) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

~~((38))~~ (39) "Wine distributor" means a person who buys wine from a vintner or winery located either within or beyond the boundaries of the state for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

~~((39))~~ (40) "Wine importer" means a person or business within Washington who purchases wine from a United States winery holding a certificate of approval (W7) or foreign produced wine from a source outside the state of Washington for the purpose of selling the same pursuant to this title.

Sec. 2. RCW 66.24.240 and 1997 c 321 § 11 are each amended to read as follows:

(1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010(5), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(3) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010(5), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

Passed the Senate March 7, 2000.
Passed the House March 3, 2000.
Approved by the Governor March 27, 2000.
Filed in Office of Secretary of State March 27, 2000.

CHAPTER 143

[Substitute Senate Bill 6687]

PORT DISTRICTS—INSURANCE

AN ACT Relating to insurance coverage for port districts; amending RCW 48.30.270; adding a new section to chapter 53.08 RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 53.08 RCW to read as follows:

Each port district shall determine risks, hazards, and liabilities associated with facilities and projects authorized under this chapter in order to obtain insurance consistent with these determinations. This insurance may include any types of insurance covering, and for the benefit of, one or more parties with whom the port district contracts for any purpose, and insurance for the benefit of its commissioners, commissions, and employees to insure against liability for acts or omissions while performing or in good faith purporting to perform their official duties. All insurance obtained for port district projects may be acquired by bid or by negotiation. In order to allow the port district flexibility to secure appropriate insurance by negotiation, the port district is exempt from RCW 48.30.270 for projects in excess of one hundred million dollars.

Sec. 2. RCW 48.30.270 and 1983 2nd ex.s. c 1 s 6 are each amended to read as follows:

(1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or agent or broker.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or

public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to:

(a) The public nonprofit corporation authorized under RCW 67.40.020; or

(b) Projects in excess of one hundred million dollars for port districts formed under chapter 53.04 RCW.

NEW SECTION. Sec. 3. This act expires December 31, 2006.

Passed the Senate February 14, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 144

[Senate Bill 6251]

HORTICULTURE

AN ACT Relating to horticultural plants and facilities; amending RCW 15.13.250, 15.13.260, 15.13.265, 15.13.270, 15.13.280, 15.13.285, 15.13.290, 15.13.300, 15.13.310, 15.13.320, 15.13.335, 15.13.340, 15.13.360, 15.13.370, 15.13.380, 15.13.390, 15.13.400, 15.13.410, 15.13.420, 15.13.425, 15.13.430, 15.13.440, 15.13.445, 15.13.450, 15.13.455, 15.13.470, 15.13.480, and 15.13.490; adding new sections to chapter 15.13 RCW; adding new sections to chapter 15.09 RCW; decodifying RCW 15.13.460, 15.13.930, and 15.13.950; repealing RCW 15.09.130 and 15.13.350; and prescribing penalties.

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

Sec. 1. RCW 15.13.250 and 1993 c 120 s 1 are each amended to read as follows:

For the purpose of this chapter:

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

(2) "Director" means the director of the department or the director's duly ~~((appointed))~~ authorized representative.

(3) "Person" means ~~((a natural person;))~~ any individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(4) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, ~~((and))~~ or viticultural plant, or turf, for planting, propagation or ornamentation growing or otherwise. The term does not apply to potato, garlic, or onion planting stock or to cut plant material, except ~~((cuttings, budsticks, scion~~

~~wood, and similar~~) plant parts used for propagative purposes(~~(, or to horticultural plants)~~)).

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants are grown, stored, handled or delivered for sale or transportation, or where records required under this chapter are stored or kept, and all vehicles and equipment(~~(, whether aerial or surface,)~~) used to transport ~~((such))~~ horticultural plants.

(6) "Plant pests" means, but is not limited to ~~((any)), a~~ living stage of ~~((any))~~ insect~~((s))~~, mite~~((s))~~, or other arthropod; nematode~~((s;))~~; slug~~((s))~~, snail~~((s))~~, or other mollusk; protozoa~~((;))~~ or other invertebrate animals~~((;))~~; bacteria~~((, fungi; other parasitic plants, weeds, or reproductive parts thereof, viruses)); fungus; virus; viroid; phytoplasma; weed or parasitic plant;~~ or any organisms similar to or allied with any of the ~~((foregoing,))~~ plant pests listed in this section; or any infectious substance~~((;))~~; which can directly or indirectly injure or cause disease or damage ~~((it))~~ to any plant or ((parts thereof, or any processed, manufactured, or other products of plants)) plant product or that threatens the diversity or abundance of native species.

(7) "Inspection and/or certification" means, but is not limited to, the inspection by the director of ~~((any))~~ horticultural plants at any time prior to, during, or subsequent to harvest~~((;))~~ or sale~~((, by the director,))~~ and the issuance by the director of a written certificate stating ~~((the grades, classifications, and))~~ ~~((such))~~ the horticultural plants ((meet Washington requirements for freedom from infestation by plant pests and)) are in compliance with ~~((all other))~~ the provisions of this chapter and rules adopted ((hereunder)) under this chapter. Inspection may include, but is not limited to, examination of horticultural plants, taking samples, destructive testing, conducting interviews, taking photographs, and examining records.

(8) "Nursery dealer" means any person who sells~~((, holds for sale, or offers for sale,))~~ horticultural plants or plants, grows, receives, or handles horticultural plants~~((, including turf for sale or for planting, including lawns,))~~ for the purpose of selling or planting for another person.

(9) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(10) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(11) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or ~~((a))~~ any other form of certification document that accompanies the movement of inspected and certified plant material.

(12) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra for use in residential and commercial landscapes.

~~(13) ("Collected horticultural plant" means a noncultivated native plant, collected in its native habitat and sold for horticultural purposes. For purposes of this chapter, such plants shall be regarded as collected horticultural plants for the first calendar year after collection.)~~ "This chapter" means this chapter and the rules adopted under this chapter.

(14) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, or plant products regulated under this chapter or title, in which the person agrees to comply with stipulated requirements.

(15) "Consignor" means the person named in the invoice, bill, or other shipping document accompanying a horticultural plant as the person from whom the horticultural plant has been received for shipment.

Sec. 2. RCW 15.13.260 and 1993 c 120 s 2 are each amended to read as follows:

The director shall enforce the provisions of this chapter and may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing standards for grades and/or classifications for any horticultural plant ~~((and standards for such grades and/or classifications))~~.

(2) The director ~~((may))~~ shall adopt rules for labeling or tagging ~~((and))~~ horticultural plants.

~~(3) The director may adopt rules~~ for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from infestation by plant pests.

~~((3))~~ (4) The director shall adopt rules establishing fees for nursery dealer licenses and for inspection of horticultural plants and methods of fee collection ~~((thereof))~~.

~~((4))~~ (5) The director may adopt rules prescribing minimum informational requirements for advertising for the sale of horticultural plants within the state.

~~((5) The director shall when adopting rules or regulations under the provisions of this chapter, hold a public hearing and satisfy all the requirements of chapter 34.05 RCW (administrative procedure act), concerning the adoption of rules and regulations:))~~

(6) The director may adopt rules establishing categories of sales and fees for permits established in RCW 15.13.270.

NEW SECTION. Sec. 3. A new section is added to chapter 15.13 RCW to read as follows:

Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making, assessment of civil penalties, emergency actions, and license suspension, revocation, or denial.

Sec. 4. RCW 15.13.265 and 1993 c 120 s 7 are each amended to read as follows:

(1) The director may enter ~~((upon))~~ and inspect the ~~((premises))~~ horticultural facilities of a nursery dealer at reasonable times for the purpose of carrying out the provisions of this chapter.

(2) If the director is denied access, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon such application issue the search warrant for the purposes requested. The warrant shall be issued on probable cause. It is sufficient probable cause to show (a) the inspection is pursuant to a general administrative practice to determine compliance with this chapter or (b) the director has reason to believe that a violation of this chapter has occurred, is occurring, or may occur.

(3) Denial of access to the director to perform inspections may subject a nursery dealer to revocation of the nursery license ~~((as provided in RCW 15.13.350)).~~

Sec. 5. RCW 15.13.270 and 1993 c 120 s 3 are each amended to read as follows:

The provisions of this chapter relating to licensing do not apply to: (1) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (2) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants ~~((as defined in RCW 15.13.250 and))~~ which are grown by or donated to its members; (3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales. ~~((The director may adopt rules establishing categories of sales and fees for the permit. The fees shall be deposited in the agricultural local fund.))~~

All horticultural plants sold under such a permit ~~((issued by the director))~~ shall be ~~((subject to all the other))~~ in compliance with the provisions of this chapter ~~((except licensing as set forth herein)).~~

Sec. 6. RCW 15.13.280 and 1993 c 120 s 4 are each amended to read as follows:

(1) No person shall act as a nursery dealer without a license for each place of business where horticultural plants are sold except as provided in RCW 15.13.270. Any person applying for such a license shall apply through the master license system. The application shall be accompanied by ~~((a))~~ the appropriate fee ~~((established by the director by rule)).~~ The director shall establish ~~((by rule, in accordance with chapter 34.05 RCW,))~~ a schedule of fees for retail and wholesale nursery dealer licenses ~~((and a schedule of fees for wholesale nursery dealer~~

licenses ~~which shall be~~) based upon the ~~((amount of a))~~ person's ~~((retail or wholesale))~~ gross annual sales of horticultural plants ~~((and turf))~~ at each place of business. The schedule for retail licenses shall include ~~((, but shall not be limited to,))~~ separate fees for at least the following two categories:

(a) A ~~((fee for a))~~ person whose gross ~~((business))~~ annual sales of ~~((such materials))~~ horticultural plants do not exceed two thousand five hundred dollars; and

(b) ~~((a fee for))~~ A person whose gross ~~((business))~~ annual sales of ~~((such materials))~~ horticultural plants exceed two thousand five hundred dollars.

(2) ~~((Except as provided in RCW 15.13.270,))~~ A person conducting both retail and wholesale sales of horticultural plants at ~~((a))~~ the same place of business shall secure ~~((for the place of business))~~ one of the following:

(a) A retail nursery dealer license if retail sales of the horticultural plants ~~((and turf))~~ exceed such wholesale sales~~((;))~~; or

(b) A wholesale nursery dealer license if wholesale sales of the horticultural plants ~~((and turf))~~ exceed such retail sales.

(3) ~~((For))~~ The director may issue a wholesale nursery dealer license to a person operating as a farmers market ~~((s that are registered as nonprofit associations with the office of the secretary of state and))~~ at which individual producers are selling directly to consumers ~~((as provided in RCW 36.71.090, the director may allow a farmers market, as an alternative to licensing of individual producers, to obtain one wholesale nursery dealer))~~. The license ~~((as provided in subsection (1) of this section,))~~ shall be at the appropriate level to cover all ~~((producers))~~ persons selling horticultural plants at each site at which the ~~((market))~~ person operates a market.

(4) The licensing fee that must accompany an application for a new license shall be based upon the applicant's estimated gross ~~((business))~~ sales of horticultural plants ~~((and turf))~~ for the ensuing licensing year. The fee for renewing a license shall be based upon the licensee's gross sales of ~~((such))~~ these products during the preceding licensing year.

(5) The license ~~((shall))~~ expires on the master license expiration date unless it has been revoked or suspended prior to the expiration date by the director for cause. Each license shall be posted in a conspicuous place open to the public in the location for which it was issued.

(6) The department may audit licensees during normal business hours to determine that appropriate fees have been paid.

Sec. 7. RCW 15.13.285 and 1992 c 23 s 1 are each amended to read as follows:

The director may, with the advice of the nursery advisory committee ~~((created under RCW 15.13.335))~~, establish by rule a surcharge ~~((to be added))~~ to the fee ~~((established))~~ for a nursery dealer license ~~((under RCW 15.13.280))~~. The surcharge ~~((applied to each license annually))~~ shall not exceed twenty percent ~~((times the amount))~~ of the license fee ~~((without the surcharge. Such a surcharge))~~

and shall be paid at the same time that the ~~((licensing))~~ license fee is paid. ~~((Revenue))~~ Moneys collected from the surcharge shall be deposited in the agricultural local fund ~~((under RCW 43.23.230))~~ and shall be used solely to support research projects which are of general benefit to the ~~((horticultural))~~ nursery industry and are recommended by the nursery advisory committee ~~((created under RCW 15.13.335))~~.

Sec. 8. RCW 15.13.290 and 1982 c 182 s 21 are each amended to read as follows:

If any application for renewal of a nursery dealer license is not filed prior to the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license ~~((shall be))~~ is issued.

Sec. 9. RCW 15.13.300 and 1982 c 182 s 22 are each amended to read as follows:

Application for a license ~~((shall be made through the master license system and))~~ shall include:

- (1) The full name of the person applying for ~~((such))~~ the license and if the applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or the names of the officers of the association or corporation ~~((shall be given in the application))~~.
- (2) The principal business address of the applicant in the state and elsewhere.
- (3) The address for the location or locations for which the licenses are being applied.
- (4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant.
- (5) Any other necessary information prescribed by the director.

Sec. 10. RCW 15.13.310 and 1993 c 120 s 5 are each amended to read as follows:

(1) ~~((There is hereby levied))~~ An annual assessment shall be levied on the gross sale price of the wholesale market value for all fruit trees, fruit tree related ornamental trees, and fruit tree rootstock produced in Washington, and sold within the state or shipped from the state ~~((of Washington))~~ by any licensed nursery dealer during any license period ~~((as set forth in this chapter))~~. Fruit tree related ornamental ~~((tree))~~ nursery stock shall be limited to the genera, Chaenomeles, Cydonia, Crataegus, Malus, Prunus, Pyrus, and Sorbus. This annual assessment is based on the first sale price of such nursery stock except for rootstocks which are replanted and/or grafted or budded and planted for growing-on in the nursery. The director shall by rule ~~((subsequent to a hearing))~~ determine the rate of an assessment ~~((conforming with the costs necessary))~~ needed to carry out the fruit tree certification and nursery improvement programs ~~((specified))~~ set forth in RCW 15.13.470 and chapter 15.14 RCW.

~~((Such))~~ The wholesale market price may be determined by the wholesale catalogue price of the seller of ~~((such))~~ the fruit trees, fruit tree related ~~((ornamental~~

trees)) ornamentals, or fruit tree rootstock or of the shipper moving such ((fruit trees, fruit tree related ornamentals, or fruit tree rootstock)) nursery stock out of the state. If the seller or shipper ((do) does not have a catalogue, then ((such)) the wholesale market price may be based on the actual selling price or an average wholesale market price. The director in determining ((such)) the average wholesale market price may use catalogues of various businesses licensed under the provisions of this chapter or any other reasonable method.

(2) ((Such)) The assessment ((shall be)) is due and payable on the first day of July of each year.

(3) The gross sale period shall be from July 1 to June 30 of the previous ((license period)) year.

(4) The department may audit the records of licensees during normal business hours to determine that the appropriate assessment has been paid.

Sec. 11. RCW 15.13.320 and 1993 c 120 s 6 are each amended to read as follows:

An advisory committee is hereby established to advise the director in the administration of the fruit tree ((and fruit tree related ornamental tree)) certification and nursery improvement program.

(1) The committee shall consist of five fruit tree nursery dealers and the director or the director's designated appointee.

(2) ((The director shall appoint)) When appointing this committee ((from)), the director shall consider names submitted by the Washington state nursery and landscape association.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed ((and qualified)).

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason the vacancy shall be filled by the director under the provisions of this section governing appointments.

Sec. 12. RCW 15.13.335 and 1990 c 261 s 6 are each amended to read as follows:

((An)) A nursery advisory committee is hereby established to advise the director in the administration of this chapter.

(1) The committee shall consist of not less than four members, representing the interests of licensed nursery dealers and the nursery industry, appointed by the director in consultation with the following persons: The president of (a) the Washington state floricultural association, (b) the Washington state bulb association, and (c) the Washington state nursery and landscape association; and the director or the director's designated appointee.

(2) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successors have been appointed ((and qualified)).

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason, the vacancy shall be filled by the director under the provisions of this section governing appointments.

Sec. 13. RCW 15.13.340 and 1971 ex.s. c 33 s 10 are each amended to read as follows:

(1) ~~((There is hereby levied on all delinquent and unpaid assessments a collection charge))~~ A late fee of twenty percent of the amount due ((and to be added thereto for each license period such)) shall be levied on all delinquent assessments for each license period the assessment is delinquent.

(2) The director shall not issue a nursery dealer license to any applicant who has failed to pay any assessment due under the provisions of this chapter.

Sec. 14. RCW 15.13.360 and 1971 ex.s. c 33 s 12 are each amended to read as follows:

The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records ~~((in))~~ for purposes of investigating compliance with this chapter or for any hearing ((in the county where the person licensed under this chapter resides affecting the authority or privilege granted by a license issued under the provisions of)) under this chapter. ~~((Witnesses except complaining witnesses, shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW, as enacted or hereafter amended.))~~

Sec. 15. RCW 15.13.370 and 1993 c 120 s 8 are each amended to read as follows:

(1) Any person licensed under the provisions of this chapter may request ~~((upon payment of actual costs to the department as prescribed by the director,))~~ the services of a ~~((nursery plant services))~~ department inspector at ~~((such))~~ the licensee's place of business or point of shipment during the shipping season. Subsequent to inspection the inspector shall issue to ~~((such))~~ the licensee a certificate of inspection signed by the inspector covering any horticultural plants which the inspector finds ~~((not))~~ to be ~~((infected with plant pests and))~~ in compliance with the provisions of this chapter ~~((and rules adopted under this chapter)).~~

(2) Any person financially interested in any horticultural plants may request inspection and/or certification services provided for horticultural plants under this chapter.

(3) To facilitate the movement of agricultural commodities, the director may provide, if requested, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service.

Sec. 16. RCW 15.13.380 and 1990 c 261 s 9 are each amended to read as follows:

~~((The director shall prescribe, in addition to those costs provided for in RCW 15.13.370, any other necessary fees to be charged the owner or the owner's agent for the inspection and certification of any horticultural plant subject to the~~

~~provisions of this chapter or rules adopted hereunder, and for the inspection and certification when such inspection and certification is performed at the request of any person financially interested in any horticultural plants which are, or are not subject to the provisions of this chapter or rules adopted hereunder, produced in or imported into this state:)~~

(1) The inspection fees provided for in this chapter shall become due and payable upon billing by the department.

(2) A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears.

(3) In addition to any other penalties, the director may refuse to perform any inspection or certification service for any person who is in arrears or who fails to pay any assessment due under the provisions of this chapter or assessments required by law to any agricultural commodity commission unless the person makes payment in full prior to such inspection or certification service.

Sec. 17. RCW 15.13.390 and 1993 c 120 s 9 are each amended to read as follows:

It is unlawful for any person to sell, ship, or transport any horticultural plant in this state unless it meets standards established in rule for freedom from infestation by plant pests (~~(No person shall sell, ship, or transport any horticultural plant in this state unless it meets the)~~) and the other requirements of this chapter (~~(or rules adopted under this chapter)~~).

Sec. 18. RCW 15.13.400 and 1993 c 120 s 10 are each amended to read as follows:

(1) It is unlawful for any person to ship or deliver any horticultural plant into this state unless (~~such horticultural plant~~) it is accompanied by an inspection certificate from the state or country of origin stating that (~~such~~) the horticultural plant meets (~~Washington requirements for freedom from infestation by plant pests and is in conformance with not less than the minimal~~) the requirements of this chapter (~~(or rules adopted under this chapter)~~). The director may require the shipper or receiver to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director (~~(in Olympia, Washington,)~~) on or before the date (~~such~~) the horticultural plants enter into the state (~~(of Washington)~~).

(2) The director may by rule require that any or all such horticultural plants delivered or shipped into the state be inspected for conformance with the requirements of this chapter (~~(and rules adopted under this chapter,)~~) prior to release by the person delivering or transporting such horticultural plants (~~(into this state)~~) even though accompanied by acceptable inspection certificates issued by the state or country of origin.

(3) Any shipment found not to be in compliance with the requirements of this chapter may be returned to the consignor at the consignor's expense. The consignor may subsequently request a hearing which shall be held in conformance with RCW 34.05.479 or other applicable provision of chapter 34.05 RCW.

Sec. 19. RCW 15.13.410 and 1993 c 120 s 11 are each amended to read as follows:

Each shipment of horticultural plants transported or shipped into the state and/or offered for retail sale within the state shall be legibly marked or tagged in a conspicuous manner.

~~((1) The department shall by rule establish marking or tagging requirements for the following plant types:~~

- ~~— (a) Fruit trees and ornamental trees and shrubs;~~
- ~~— (b) Perennial plants;~~
- ~~— (c) Flowering and nonflowering annuals and biennials;~~
- ~~— (d) Turf grasses;~~
- ~~— (e) Collected horticultural plants; and~~
- ~~— (f) Aquatic and semi-aquatic plants.~~

~~(2) When plants, other than floricultural products are on display for retail sale, each unit of sale shall be tagged as prescribed in rule.~~

~~(3)) The director may, whenever the director finds that any horticultural plant is not properly marked, order it off sale until it is properly marked, or order that it be returned to the consignor for proper marking.~~

Sec. 20. RCW 15.13.420 and 1993 c 120 s 12 are each amended to read as follows:

It ~~((shall be))~~ is unlawful for any person:

(1) To falsely ~~((represent that the person is the))~~ claim to be an agent or representative of any nursery dealer in horticultural plants;

(2) ~~((To deceive or defraud another in the sale of horticultural plants by substituting inferior or different grades from those ordered;~~

~~— (3) To bring into this state or to sell, offer for sale, hold for sale, distribute, ship or deliver any horticultural plants not in conformity with standards established in rule concerning infestation by plant pests;~~

~~— (4)) To sell ~~((, offer for sale, hold for sale, solicit orders for))~~ or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, method of propagation, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;~~

~~((5)) (3) To alter an official certificate or other official inspection document for plant materials covered by this chapter or to falsely represent a document as an official certificate ~~((when such is not the case));~~~~

~~((6) To make the following representations directly or indirectly, without limiting the effects of this section:~~

~~— (a) That any horticultural plant has been propagated by grafting or budding methods, when such is not the fact;~~

~~—(b) That any horticultural plant is healthy and will grow anywhere without the use of fertilizer, or will survive and produce without special care, when such is not a fact;~~

~~—(c) That any horticultural plant blooms the year around, or will bear an extraordinary number of blooms of unusual size or quality, when such is not a fact;~~

~~—(d) That any horticultural plant is a new variety, when in fact it is a standard variety to which the person who is selling or holding such horticultural plant for sale has given a new name;~~

~~—(e) That any horticultural plant cannot be purchased through usual outlets, or that limited stocks are available, when such is not the fact;~~

~~—(f) That any horticultural plant offered for sale will be delivered in time for the next, or any specified, seasonal planting when the seller is aware of factors which make such delivery improbable;~~

~~—(g) That the appearance of any horticultural plant is normal or usual when the appearance so represented is in fact abnormal or unusual;~~

~~—(h) That the root system of any horticultural plant is appreciably larger than that which actually exists, whether accomplished by means of packaging, balling or otherwise;~~

~~—(i) That bulblets are bulbs;~~

~~—(j) That any horticultural plant is rare or an unusual item, when such is not the fact;~~

~~—(7) To sell, offer for sale or hold for sale, or plant for another person any horticultural plants on the basis of grade, unless such horticultural plants have been graded and/or classified and meet the standards prescribed by the director for such grades and/or classifications;~~

~~—(8)) (4) To substitute any ((other)) horticultural plant or agricultural commodity for a horticultural plant or agricultural commodity covered by an inspection certificate((;~~

~~—(9) To sell, offer for sale, or hold for sale, or plant for another person, any horticultural plant which is dead, in a dying condition, seriously broken, frozen, or damaged, or abnormally potbound)).~~

Sec. 21. RCW 15.13.425 and 1993 c 120 s 13 are each amended to read as follows:

No publisher, radio and television broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the grower, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 15.13.490(2) by reason of dissemination of any false advertisement, unless the person has refused on the request of the director to furnish the name and address of the grower, packer, distributor, seller, or advertising agency in the state of Washington, who caused dissemination of the false advertisement.

Sec. 22. RCW 15.13.430 and 1993 c 120 s 14 are each amended to read as follows:

When the ~~((department))~~ director has cause to believe that any horticultural plants are damaged or are infested or infected by any plant pest, ~~((chemical or other damage;))~~ the director may issue a hold order on such ~~((horticulture))~~ horticultural plants. A hold order may prescribe conditions under which plants must be held to prevent spread of the infestation or infection. Treatment or other corrective measures shall be the sole responsibility of the persons holding the plant material for sale. It ~~((shall be))~~ is unlawful to sell ~~((offer for sale;))~~ or move such plants until released in writing by the director.

Sec. 23. RCW 15.13.440 and 1993 c 120 s 15 are each amended to read as follows:

The director shall condemn any ~~((or all))~~ horticultural plants ~~((in a shipment or))~~ shipped or sold when ~~((any))~~ such horticultural plants ~~((are held for sale, or offered for sale and they))~~ are found to be dead, in a dying condition, seriously broken, diseased~~((;))~~ or infested ~~((with harmful insects))~~ to the extent that treatment is not practical, damaged ~~((or)),~~ frozen, or abnormally potbound ~~((and)).~~ The director shall order such horticultural plants to be destroyed or returned at shipper's option.

Sec. 24. RCW 15.13.445 and 1993 c 120 s 16 are each amended to read as follows:

Upon issuance of an order or upon action by the director under RCW ~~15.13.400, 15.13.410,~~ 15.13.430, or 15.13.440, the ~~((seller or holder))~~ consignor of the plant material ~~((is entitled to))~~ may request a hearing under chapter 34.05 RCW.

NEW SECTION. Sec. 25. A new section is added to chapter 15.13 RCW to read as follows:

No state court shall allow the recovery of damages from administrative action, hold order, or condemnation order if the court finds there was probable cause for the action.

Sec. 26. RCW 15.13.450 and 1971 ex.s. c 33 s 21 are each amended to read as follows:

The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted ~~((pursuant to))~~ under this chapter in the superior court in Thurston county or the county in which ~~((such))~~ the violation occurs, notwithstanding the existence of other remedies at law.

Sec. 27. RCW 15.13.455 and 1983 1st ex.s. c 73 s 7 are each amended to read as follows:

(1) The director ~~((is hereby authorized to))~~ may apply to the superior court of Thurston county for a prompt hearing on, and ~~((such))~~ the court shall have jurisdiction upon, and for cause shown the court shall, without proof that an adequate remedy at law does not exist, grant ~~((a temporary or permanent))~~ an injunction restraining any person from operating as a nursery dealer without a valid license.

(2) An order restraining any person from operating as a nursery dealer without a valid license shall contain such provision for the payment of pertinent court costs and reasonable attorneys' fees and administrative expenses as is equitable and the court deems appropriate in the circumstances.

Sec. 28. RCW 15.13.470 and 1999 c 144 s 16 are each amended to read as follows:

(1) Except as provided in RCW 15.13.285 and in subsections (2) and (3) of this section, all moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter (~~and rules adopted under this chapter~~). No appropriation is required for the disbursement of moneys from the account by the director.

(2) All fees collected for fruit tree, fruit tree related ornamental tree, and fruit tree rootstock assessments as set forth in this chapter shall be deposited in the planting stock certification account within the agricultural local fund to be used only for the Washington fruit tree and fruit tree related ornamental tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW.

(3) All moneys collected for civil penalties under this chapter shall be deposited in the nursery research account within the agricultural local fund.

NEW SECTION. Sec. 29. A new section is added to chapter 15.13 RCW to read as follows:

The director may enter into compliance agreements with any person for the purpose of carrying out the provisions of this chapter.

Sec. 30. RCW 15.13.480 and 1993 c 120 s 18 are each amended to read as follows:

The director may cooperate with and enter into contracts or agreements with governmental agencies of this state(;) and other states (~~and~~), agencies of the federal government, and any other organization in order to carry out the purpose and provisions of this chapter.

The director may enter into agreements with the United States department of agriculture for the (~~issuance of~~) purpose of issuing phytosanitary certificates and other inspection documents, according to federal procedures, to facilitate the export of (~~nursery~~) products from the state.

Sec. 31. RCW 15.13.490 and 1990 c 261 s 14 are each amended to read as follows:

~~(A)~~ Any person who fails to comply with this chapter (~~or the rules adopted under it~~) may be (~~subjected~~) subject to:

(1) Denial, revocation, or suspension of the person's nursery dealer license; and/or

(2) A civil penalty(~~as determined by the director,~~) in an amount of not more than one thousand dollars for each violation. Each violation shall be a separate and distinct offense. Every person who, through an act of commission or omission,

procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty provided in this section.

NEW SECTION. Sec. 32. RCW 15.13.460, 15.13.930, and 15.13.950 are each decodified.

NEW SECTION. Sec. 33. A new section is added to chapter 15.09 RCW to read as follows:

Funding of the operating budget of a horticultural pest and disease board may be derived from any or all of the following:

(1) Moneys from the county general fund or other general revenues, as appropriated by the board of county commissioners or other county legislative authority;

(2) A horticultural tax, as authorized in RCW 15.08.260, levied by the county board of commissioners or other county legislative authority; or

(3) An assessment against all lands.

NEW SECTION. Sec. 34. A new section is added to chapter 15.09 RCW to read as follows:

(1) Prior to the levying of an assessment authorized in section 33 of this act, the horticultural pest and disease board shall hold a public hearing at which it will gather information to serve as a basis for classification and then classify the lands into suitable classification, including but not limited to orchard lands, range lands, dry lands, nonuse lands, forest lands, or federal lands.

(2) The board shall develop and forward to the county board of commissioners or other county legislative authority, as a proposed level of assessment for each class, an amount that seems just. The assessment rate shall be either uniform per acre in its respective class, a flat rate per parcel, or a flat rate per parcel rate plus a uniform rate per acre: PROVIDED, That if no benefits are found to accrue to a class of land, a zero assessment may be levied.

(3) The county board of commissioners or other county legislative authority, upon receipt of the proposed levels of assessment from the horticultural pest and disease board, after a hearing, shall accept or modify by resolution, or refer back to the horticultural pest and disease board for its reconsideration, all or any portion of the proposed levels of assessment.

(4) The amount of the assessment constitutes a lien against the property. The assessments shall be subject to the same provisions as those for property tax collections, as provided in RCW 84.56.020, and shall be collected by the county treasurer under the authority in RCW 84.56.035.

NEW SECTION. Sec. 35. A new section is added to chapter 15.09 RCW to read as follows:

The horticultural pest and disease board may enter into contracts and agreements with federal, state, and local government agencies, Indian tribes, and any other organization to perform any duties pursuant to the identification, detection, control, or eradication of horticultural pests and diseases.

NEW SECTION. Sec. 36. The following acts or parts of acts are each repealed:

- (1) RCW 15.09.130 (Operating moneys) and 1969 c 113 s 13; and
- (2) RCW 15.13.350 (Denial, suspension, revocation of license—Grounds) and 1990 c 261 s 7, 1989 c 175 s 43, & 1971 ex.s. c 33 s 11.

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CHAPTER 145

[Senate Bill 6678]

HORSE RACING—PARIMUTUEL WAGERING

AN ACT Relating to repealing sunset provisions for parimutuel wagering with respect to horse racing; and repealing RCW 43.131.395, 43.131.396, 67.16.095, 67.16.106, and 67.16.171.

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

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

- (1) RCW 43.131.395 (Parimutuel taxes and redistributions—Review) and 1998 c 345 s 8;
- (2) RCW 43.131.396 (Parimutuel taxes and redistributions—Repeal) and 1998 c 345 s 9;
- (3) RCW 67.16.095 (Sums paid to commission—Disposition—Retainage) and 1998 c 345 s 10;
- (4) RCW 67.16.106 (Gross receipts—Commission's percentage—Nonprofit race meets) and 1998 c 345 s 11; and
- (5) RCW 67.16.171 (Gross receipts—Retention of percentage by licensees) and 1998 c 345 s 12.

Passed the Senate February 10, 2000.
 Passed the House February 29, 2000.
 Approved by the Governor March 27, 2000.
 Filed in Office of Secretary of State March 27, 2000.

CHAPTER 146

[Substitute Senate Bill 6720]

BEEF COMMISSION

AN ACT Relating to the Washington state beef commission; amending RCW 16.67.040, 16.67.090, 16.67.100, 16.67.110, 16.67.120, 16.67.122, and 16.67.130; and repealing RCW 16.67.150.

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

Sec. 1. RCW 16.67.040 and 1997 c 363 s 1 are each amended to read as follows:

There is hereby created a Washington state beef commission to be thus known and designated. The commission shall be composed of two beef producers, two dairy (beef) producers, two feeders, one livestock salesyard operator, and one meat packer. If an otherwise voting member is elected as the chair of the commission, the member may, during the member's term as chair of the commission, cast a vote as a member of the commission only to break a tie vote. In addition there ~~((will))~~ may be one ex officio member without the right to vote from the department of agriculture to be designated by the director thereof and, if the commission so chooses, one additional nonvoting member in an advisory capacity appointed by the voting members of the commission for such a term as the voting members may set.

A majority of voting members shall constitute a quorum for the transaction of any business.

All appointed members as stated in RCW 16.67.060 shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in that phase of the cattle industry he or she represents for a period of five years, and has during that period derived a substantial portion of his or her income therefrom, or have a substantial investment in cattle as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of cattle or dressed beef, or a manager or executive officer of such corporation. Producer members of the commission shall not be directly engaged in the business of being a meat packer, or as a feeder, feeding cattle other than their own. Said qualifications must continue throughout each member's term of office.

Sec. 2. RCW 16.67.090 and 1982 c 81 s 3 are each amended to read as follows:

The powers and duties of the commission shall include the following:

- (1) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;
- (2) To elect a chairman and such other officers as it deems advisable;
- (3) To employ and discharge at its discretion a manager, secretary, and such other personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the commission determines are necessary and proper to carry out the purposes of this chapter, and to prescribe their duties and powers and fix their compensation;
- (4) To adopt, rescind, and amend rules, regulations and orders for the exercise of its powers hereunder subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as now or hereafter amended;
- (5) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the commission. All records, books and minutes of the commission shall be kept at such headquarters;
- (6) To require a bond of all commission members and employees of the commission in a position of trust in the amount the commission shall deem

necessary. The premium for such bond or bonds shall be paid by the commission from assessments collected. Such bond shall not be necessary if any such commission member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(7) To establish a beef commission revolving fund, such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the commission, except an amount of petty cash for each day's needs not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable; none of the provisions of RCW 43.01.050 as now or hereafter amended shall apply to money collected under this chapter;

(8) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

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

(10) To borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(11) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, expenditures, moneys and other financial transactions made and done pursuant to this chapter. Such records, books and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year (~~of the state of Washington~~). A copy of such audit shall be delivered within thirty days after completion thereof to the director, the state auditor and the commission. On such years and in such event the state auditor is unable to audit the records, books and accounts within six months following the close of the audit period it shall be mandatory that the commission employ a private auditor to make such audit;

(12) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(13) To cooperate with any other local, state, or national commission, organization or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in work or activities similar to the work and activities of the commission created by this chapter and make contracts and agreements with such organizations or agencies for carrying on joint programs beneficial to the beef industry;

(14) To accept grants, donations, contributions or gifts from any governmental agency or private source for expenditures for any purpose consistent with the provisions of this chapter;

(15) To operate jointly with beef commissions or similar agencies established by state laws in adjoining states.

Sec. 3. RCW 16.67.100 and 1969 c 133 s 9 are each amended to read as follows:

The commission shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the commission.

The commission shall hold an annual meeting(~~(, at which time an annual report will be presented)~~). The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the commission at least ten days prior to the meeting by public notice of such meeting published in newspapers of general circulation in the state of Washington, by radio and press releases and through trade publications.

The commission shall establish by resolution, the time, place and manner of calling special meetings of the commission with reasonable notice to the members: PROVIDED, That, the notice of any special meeting may be waived by a waiver thereof by each member of the commission.

Sec. 4. RCW 16.67.110 and 1969 c 133 s 10 are each amended to read as follows:

The commission shall provide for programs designed to increase the consumption of beef; develop more efficient methods for the production, processing, handling and marketing of beef; eliminate transportation rate inequalities on feed grains and supplements and other production supplies adversely affecting Washington producers; properly identify beef and beef products for consumers as to quality and origin. For these purposes the commission may:

(1) Provide for programs for advertising, sales promotion and education, locally, nationally or internationally, for maintaining present markets and/or creating new or larger markets for beef. Such programs shall be directed toward increasing the sale of beef (~~(without reference to any particular brand or trademark)~~) and shall neither make use of false or unwarranted claims in behalf of beef nor disparage the quality, value, sale or use of any other agricultural commodity;

(2) Provide for research to develop and discover the health, food, therapeutic and dietetic value of beef and beef products thereof;

(3) Make grants to research agencies for financing studies, including funds for the purchase or acquisition of equipments and facilities, in problems of beef production, processing, handling and marketing;

(4) Disseminate reliable information founded upon the research undertaken under this chapter or otherwise available;

(5) Provide for rate studies and participate in rate hearings connected with problems of beef production, processing, handling or marketing; and

(6) Provide for proper labeling of beef and beef products so that the purchaser and the consuming public of the state will be readily apprised of the quality of the product and how and where it was processed.

Sec. 5. RCW 16.67.120 and 1987 c 393 s 11 are each amended to read as follows:

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

(2) ~~((While the federal order implementing the national beef promotion and research program is in effect, the assessment to be levied and))~~ The procedures for ~~((its collection))~~ collecting all state and federal assessments under this chapter shall be as required by the federal order and as described by rules adopted by the commission.

Sec. 6. RCW 16.67.122 and 1986 c 190 s 1 are each amended to read as follows:

In addition to the assessment authorized pursuant to RCW 16.67.120, the commission ~~((shall have))~~ has the authority to collect an additional assessment of ~~((fifty cents))~~ one dollar per head for cattle subject to assessment by federal order for the purpose of providing funds for a national beef promotion and research program. The manner in which this assessment will be levied and collected shall be established by rule. The authority to collect this assessment shall be contingent upon the implementation of federal legislation providing for a national beef promotion and research program and the establishment of the assessment requirement to fund its activities.

Sec. 7. RCW 16.67.130 and 1969 c 133 s 12 are each amended to read as follows:

Any due and payable assessment levied under the provisions of this chapter shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable ~~((within thirty days from the date it becomes first due the commission))~~ on the fifteenth day of the month following the month the transaction occurred. In the event any such person fails to pay the full amount within such ~~((thirty days))~~ time, the commission shall add to such unpaid assessment an amount of ten percent of the unpaid assessment to defray the cost of collecting the same. In the event of failure of such person to pay such due and payable assessment, the commission may bring civil action against such person in a state court of competent jurisdiction for the collection thereof, together with the

above specified ten percent thereon and any other additional necessary reasonable costs including attorneys' fees. Such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

NEW SECTION. Sec. 8. RCW 16.67.150 (Sales of milk production animals exempted from assessment—Exception) and 1986 c 190 s 3 & 1969 c 133 s 14 are each repealed.

Passed the Senate March 6, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 147

[Substitute Senate Bill 6781]

DAIRY NUTRIENT MANAGEMENT TASK FORCE

AN ACT Relating to dairy nutrients; adding new sections to chapter 90.64 RCW; creating new sections; providing expiration 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 90.64 RCW to read as follows:

(1) A dairy nutrient management task force is created that shall be comprised of no more than fifteen members, who are appointed as follows:

(a) Two members of the house of representatives, one from each major caucus, appointed by the co-speakers of the house of representatives;

(b) Two members of the senate, one from each major caucus, appointed by the president of the senate;

(c) A representative of the department of ecology, appointed by the director of ecology;

(d) A representative of the state conservation commission, appointed by its executive secretary;

(e) A representative of local conservation districts, appointed by the president of a state-wide association of conservation districts;

(f) A representative of local health departments, appointed by the Washington state association of local public health officials;

(g) A representative of commercial shellfish growers, appointed by a state-wide organization representing oyster growers;

(h) Four representatives of the dairy industry, appointed by a state-wide organization representing the dairy industry in the state;

(i) A representative of an environmental interest organization with familiarity and expertise in water quality issues, appointed by a state-wide organization representing environmental interests;

(j) A representative of the United States environmental protection agency, appointed by the regional director of the agency if the agency chooses to be represented on the task force; and

(k) A representative of the United States natural resources conservation service, appointed by the state conservationist of that agency for this state, if the agency chooses to be represented on the task force.

(2) The task force shall convene as soon as possible upon appointment of its members. The task force shall elect a chair and adopt rules for conducting the business of the task force. Staff support for the task force shall be provided by the Washington state conservation commission.

(3) This section expires June 30, 2004.

NEW SECTION. Sec. 2. A new section is added to chapter 90.64 RCW to read as follows:

(1) By December 31, 2000, the task force shall recommend to the department and to the legislature:

(a) Clarification of key terms and phrases such as, but not limited to, "potential to pollute," that are used in the administration of this chapter and other statutes on water quality;

(b) How frequently dairy nutrient management plans should be updated, considering the evolution of technical standards developed by the natural resources conservation service;

(c) Considering the report under section 3 of this act, the disposition of penalties collected from dairy producers under chapter 90.48 RCW;

(d) Considering the report under section 4 of this act, recommended sources of funding to meet the needs identified in the report;

(e) The extent to which engineering expertise is required to implement the provisions of this chapter;

(f) How to address responsibility for contamination originating from neighboring farms; and

(g) Clarification of the duties of the department as they pertain to initial inspections of dairy farms.

(2) The task force shall make recommendations to the department and to the legislature on any other issues, and at such times, as the task force deems important to the successful implementation of this chapter.

(3) This section expires June 30, 2004.

NEW SECTION. Sec. 3. (1) By September 1, 2000, the department of ecology shall report to the dairy nutrient management task force on the penalties assessed on dairy producers for violations of chapters 90.48 and 90.64 RCW since January 1, 1998. The report shall indicate the amount of money from these penalties that was deposited into the coastal protection fund created under RCW 90.48.390 and the amount deposited into the dairy waste management account created under RCW 90.64.150. The report shall also indicate the purposes for which moneys reported under this section were expended.

(2) This section expires December 31, 2000.

***NEW SECTION. Sec. 4. (1)** *By September 1, 2000, the office of financial management shall make recommendations to the dairy nutrient management task force on how to provide adequate funding for the dairy nutrient management program. The recommendations shall include an identification of need, if any, for additional funding for each of the following purposes:*

(a) To perform functions required by conservation districts and the state conservation commission;

(b) To provide technical assistance for development of dairy nutrient management plans; and

(c) For cost-share moneys for implementation of the plans based on fifty percent of the eligible costs to be derived from public sources. The recommendations shall be for the amount of funding for these purposes that is required each fiscal year through June 30, 2004, in order to meet the deadlines established in chapter 90.64 RCW.

(2) The office of financial management shall submit its written recommendations to the co-chief clerks of the house of representatives and the secretary of the senate.

(3) This section expires December 31, 2000.

*Sec. 4 was vetoed. See message at end of chapter.

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 takes effect immediately.

Passed the Senate March 9, 2000.

Passed the House March 8, 2000.

Approved by the Governor March 27, 2000, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 2000.

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

"I am returning herewith, without my approval as to section 4, Substitute Senate Bill No. 6781 entitled:

"AN ACT Relating to dairy nutrients;"

This bill refines the Dairy Nutrient Management Act that was created in the 1989 legislative session. Among other things, it creates a dairy nutrient management task force consisting of legislative, executive, federal and interest group members. Section 4 of the bill would have required the Office of Financial Management to make recommendations to the task force on funding the dairy nutrient management program. Such recommendations are more properly the function of the industry.

For these reasons, I have vetoed section 4 of Substitute Senate Bill No. 6781.

With the exception of section 4, Substitute Senate Bill No. 6781 is approved."

CHAPTER 148

[Engrossed Substitute Senate Bill 6149]

STATE FOREST LANDS

AN ACT Relating to the sale of specific lands for the purposes of resolving trespass on state forest lands; amending RCW 76.12.080, 76.12.120, and 43.30.115; and adding a new section to chapter 76.12 RCW.

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

Sec. 1. RCW 76.12.080 and 1988 c 128 s 28 are each amended to read as follows:

The department shall take such steps as it deems advisable for locating and acquiring lands suitable for state forests and reforestation. Acquisitions made pursuant to this section shall be at no more than fair market value. ~~No ((sum in excess of two dollars per acre shall ever be paid or allowed either in cash, bonds or otherwise, for any lands suitable for forest growth, but devoid of such; nor shall any sum in excess of six dollars per acre be paid or allowed either in cash, bonds or otherwise, for any lands adequately restocked with young growth or left in a satisfactory natural condition for natural reforestation and continuous forest production; nor shall any))~~ lands shall ever be acquired by the department except upon the approval of the title by the attorney general and on a conveyance being made to the state of Washington by good and sufficient deed. No forest lands shall be designated, purchased, or acquired by the department unless the area so designated or the area to be acquired shall, in the judgment of the department, be of sufficient acreage and so located that it can be economically administered for forest development purposes. ~~((Whenever the department acquires or designates an area as forest lands it shall designate such area by a distinctive name or number, e.g., "State forest No. . . .", or, "Cascade State Forest"))~~.

Sec. 2. RCW 76.12.120 and 1998 c 71 s 2 are each amended to read as follows:

Except as provided in section 3 of this act, all land, acquired or designated by the department as state forest land, shall be forever reserved from sale, but the timber and other products thereon may be sold or the land may be leased in the same manner and for the same purposes as is authorized for state granted land if the department finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.

Except as provided in RCW 79.12.035, all money derived from the sale of timber or other products, or from lease, or from any other source from the land, except where the Constitution of this state or RCW 76.12.030 requires other disposition, shall be disposed of as follows:

- (1) Fifty percent shall be placed in the forest development account.
- (2) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of the public schools, and the county in which the land is located according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based

on the regular school levy rate under RCW 84.52.065 as now or hereafter amended and the levy rate for any maintenance and operation special school levies. With regard to the portion to be distributed to the counties, the department shall certify to the state treasurer the amounts to be distributed within seven working days of receipt of the money. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date. The money distributed to the county shall be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment.

NEW SECTION. Sec. 3. A new section is added to chapter 76.12 RCW to read as follows:

(1) With the approval of the board of natural resources, the department may directly transfer or dispose of lands acquired under this chapter without public auction, if such lands consist of ten contiguous acres or less, or have a value of twenty-five thousand dollars or less. Such disposal may only occur in the following circumstances:

- (a) Transfers in lieu of condemnation; and
- (b) Transfers to resolve trespass and property ownership disputes.

(2) Real property to be transferred or disposed of under this section shall be transferred or disposed of only after appraisal and for at least fair market value, and only if such transaction is in the best interest of the state or affected trust.

(3) The proceeds from real property transferred or disposed of under this section shall be deposited into the park land trust revolving fund and be solely used to buy replacement land within the same county as the property transferred or disposed.

Sec. 4. RCW 43.30.115 and 1995 c 211 s 5 are each amended 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 or under section 3 of this act. 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.

Passed the Senate February 12, 2000.
Passed the House March 2, 2000.
Approved by the Governor March 27, 2000.
Filed in Office of Secretary of State March 27, 2000.

CHAPTER 149

[Substitute Senate Bill 6294]
AQUATIC NUISANCE SPECIES

AN ACT Relating to aquatic nuisance species; and adding a new section to chapter 75.24 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 75.24 RCW to read as follows:

(1) The aquatic nuisance species committee is created for the purpose of fostering state, federal, tribal, and private cooperation on aquatic nuisance species issues. The mission of the committee is to minimize the unauthorized or accidental introduction of nonnative aquatic species and give special emphasis to preventing the introduction and spread of aquatic nuisance species. The term "aquatic nuisance species" means a nonnative aquatic plant or animal species that threatens the diversity or abundance of native species, the ecological stability of infested waters, or commercial, agricultural, or recreational activities dependent on such waters.

(2) The committee consists of representatives from each of the following state agencies: Department of fish and wildlife, department of ecology, department of agriculture, department of health, department of natural resources, Puget Sound water quality action team, state patrol, state noxious weed control board, and Washington sea grant program. The committee shall encourage and solicit participation by: Federally recognized tribes of Washington, federal agencies, Washington conservation organizations, environmental groups, and representatives from industries that may either be affected by the introduction of an aquatic nuisance species or that may serve as a pathway for their introduction.

(3) The committee has the following duties:

(a) Periodically revise the state of Washington aquatic nuisance species management plan, originally published in June 1998;

(b) Make recommendations to the legislature on statutory provisions for classifying and regulating aquatic nuisance species;

(c) Recommend to the state noxious weed control board that a plant be classified under the process designated by RCW 17.10.080 as an aquatic noxious weed;

(d) Coordinate education, research, regulatory authorities, monitoring and control programs, and participate in regional and national efforts regarding aquatic nuisance species;

(e) Consult with representatives from industries and other activities that may serve as a pathway for the introduction of aquatic nuisance species to develop practical strategies that will minimize the risk of new introductions; and

(f) Prepare a biennial report to the legislature with the first report due by December 1, 2001, making recommendations for better accomplishing the purposes of this chapter, and listing the accomplishments of this chapter to date.

(4) The committee shall accomplish its duties through the authority and cooperation of its member agencies. Implementation of all plans and programs developed by the committee shall be through the member agencies and other cooperating organizations.

Passed the Senate March 7, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 150

[Substitute Senate Bill 6454]

NATURAL RESOURCES—OBSOLETE ACCOUNTS

AN ACT Relating to obsolete natural resources accounts; creating a new section; repealing RCW 79A.20.020, 75.58.020, 70.95H.800, 70.95.520, 70.95.800, 43.21J.020, 43.83C.030, 79A.05.365, 75.52.140, and 77.21.080; and providing an effective date.

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

NEW SECTION. Sec. 1. (1) On July 1, 2001, any remaining fund balances in the following accounts are transferred to the state wildlife account:

- (a) The aquaculture disease control account;
- (b) The Cedar river channel construction and operation account; and
- (c) The wildlife conservation reward fund.

(2) On July 1, 2001, any remaining fund balances in the following accounts are transferred to the parks renewal and stewardship account:

- (a) The state wildlife and recreation lands management account;
- (b) The state and local improvements revolving account—recreation; and
- (c) The underwater park account.

(3) On July 1, 2001, any remaining fund balances in the following accounts are transferred to the state toxics control account:

- (a) The clean Washington account;
- (b) The vehicle tire recycling account; and
- (c) The solid waste management account.

NEW SECTION. Sec. 2. The following acts or parts of acts are each repealed:

- (1) RCW 79A.20.020 (State wildlife and recreation lands management account) and 1992 c 153 s 4;

- (2) RCW 75.58.020 (Disease inspection and control program—User fees—Aquaculture disease control account) and 1993 sp.s. c 2 s 56 & 1985 c 457 s 9;
- (3) RCW 70.95H.800 (Clean Washington account) and 1991 c 319 s 212;
- (4) RCW 70.95.520 (Vehicle tire recycling account—Deposit of funds) and 1996 c 283 s 902, 1989 c 431 s 94, & 1985 c 345 s 6;
- (5) RCW 70.95.800 (Solid waste management account—Expenditures) and 1993 c 130 s 2, 1991 sp.s. c 13 s 73, & 1989 c 431 s 90;
- (6) RCW 43.21J.020 (Environmental and forest restoration account) and 1993 c 516 s 3;
- (7) RCW 43.83C.030 (Proceeds to be deposited in state and local improvements revolving account) and 1991 sp.s. c 13 s 54, 1985 c 57 s 47, & 1972 ex.s. c 129 s 3;
- (8) RCW 79A.05.365 (Underwater parks—Fees—Underwater park account) and 1993 c 267 s 3;
- (9) RCW 75.52.140 (Cedar river spawning channel—Transfer of funds) and 1989 c 85 s 7; and
- (10) RCW 77.21.080 (Wildlife conservation reward fund) and 1989 c 11 s 29 & 1987 c 506 s 75.

NEW SECTION. **Sec. 3.** This act takes effect July 1, 2001.

Passed the Senate March 7, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 151

[Engrossed Senate Bill 5667]

SPORTING EVENTS—COMPLIMENTARY TICKETS—SAFETY

AN ACT Relating to boxing, kickboxing, martial arts, and wrestling; and amending RCW 67.08.050 and 67.08.015.

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

Sec. 1. RCW 67.08.050 and 1999 c 282 s 4 are each amended to read as follows:

(1) Any promoter shall within seven days prior to the holding of any event file with the department a statement setting forth the name of each licensee who is a potential participant, his or her manager or managers, and such other information as the department may require. Participant changes regarding a wrestling event may be allowed after notice to the department, if the new participant holds a valid license under this chapter. The department may stop any wrestling event in which a participant is not licensed under this chapter.

(2) Upon the termination of any event the promoter shall file with the designated department representative a written report, duly verified as the department may require showing the number of tickets sold for the event, the price

charged for the tickets and the gross proceeds thereof, and such other and further information as the department may require. The promoter shall pay to the department at the time of filing the report under this section a tax equal to five percent of such gross receipts. However, the tax may not be less than twenty-five dollars. The five percent of such gross receipts shall be immediately paid by the department into the state general fund.

(3) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. The number of untaxed complimentary tickets shall be limited to ~~((five))~~ ten percent of the total tickets sold per event location, not to exceed ~~((three hundred))~~ one thousand tickets. All complimentary tickets exceeding this exemption shall be subject to taxation.

Sec. 2. RCW 67.08.015 and 1999 c 282 s 3 are each amended to read as follows:

(1) In the interest of ensuring the safety and welfare of the participants, the department shall have power and it shall be its duty to direct, supervise, and control all boxing, martial arts, and wrestling events conducted within this state and an event may not be held in this state except in accordance with the provisions of this chapter. The department may, in its discretion, issue and for cause, which includes concern for the safety and welfare of the participants, deny, revoke, or suspend a license to promote, conduct, or hold boxing, kickboxing, martial arts, or wrestling events where an admission fee is charged by any person, club, corporation, organization, association, or fraternal society.

(2) All boxing, kickboxing, martial arts, or wrestling events that:

(a) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(b) Are entirely amateur events promoted on a nonprofit basis or for charitable purposes;

are not subject to the licensing provisions of this chapter. A boxing, martial arts, kickboxing, or wrestling event may not be conducted within the state except under a license issued in accordance with this chapter and the rules of the department except as provided in this section.

(3) The director shall prohibit events unless all of the contestants are either licensed under this chapter or trained by an amateur or professional sanctioning body recognized by the department.

Passed the Senate February 1, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 152

[Senate Bill 6010]

HIGHER EDUCATION—FEE WAIVERS

AN ACT Relating to operating fee waivers; amending RCW 28B.15.066 and 28B.15.910; and adding a new section to chapter 28B.15 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.15 RCW to read as follows:

In addition to waivers granted under the authority of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, subject to state board policy, may waive all or a portion of the operating fees for any student. There shall be no state general fund support for waivers granted under this section.

By January 31st of each odd-numbered year, the institutions of higher education shall prepare a report of the costs and benefits of waivers granted under this act and shall transmit copies of their report to the appropriate policy and fiscal committees of the legislature.

Sec. 2. RCW 28B.15.066 and 1999 c 309 s 932 are each amended to read as follows:

It is the intent of the legislature that:

In making appropriations from the state's general fund to institutions of higher education, each appropriation shall conform to the following:

(1) The appropriation shall not be reduced by the amount of operating fees revenue estimated to be collected from students enrolled at the state-funded enrollment level specified in the omnibus biennial operating appropriations act;

(2) The appropriation shall not be reduced by the amount of operating fees revenue collected from students enrolled above the state-funded level, but within the over-enrollment limitations, specified in the omnibus biennial operating appropriations act; and

(3) The general fund state appropriation shall not be reduced by the amount of operating fees revenue collected as a result of waiving less operating fees revenue than the amounts authorized under RCW 28B.15.910. State general fund appropriations shall not be provided for revenue foregone as a result of or for waivers granted under ~~((section 601(3)(c), chapter 309, Laws of 1999))~~ section 1 of this act.

Sec. 3. RCW 28B.15.910 and 1999 c 344 s 3 are each amended to read as follows:

(1) For the purpose of providing state general fund support to public institutions of higher education, except for revenue waived under programs listed in subsections (3) and (4) of this section, and unless otherwise expressly provided in the omnibus state appropriations act, the total amount of operating fees revenue waived, exempted, or reduced by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, shall not exceed

the percentage of total gross authorized operating fees revenue in this subsection. As used in this section, "gross authorized operating fees revenue" means the estimated gross operating fees revenue as estimated under RCW 82.33.020 or as revised by the office of financial management, before granting any waivers. This limitation applies to all tuition waiver programs established before or after July 1, 1992.

(a) University of Washington	21 percent
(b) Washington State University	20 percent
(c) Eastern Washington University	11 percent
(d) Central Washington University	8 percent
(e) Western Washington University	10 percent
(f) The Evergreen State College	6 percent
(g) Community colleges as a whole	35 percent

(2) The limitations in subsection (1) of this section apply to waivers, exemptions, or reductions in operating fees contained in the following:

- (a) RCW 28B.10.265;
- (b) RCW 28B.15.014;
- (c) RCW 28B.15.100;
- (d) RCW 28B.15.225;
- (e) RCW 28B.15.380;
- (f) RCW 28B.15.520;
- (g) RCW 28B.15.526;
- (h) RCW 28B.15.527;
- (i) RCW 28B.15.543;
- (j) RCW 28B.15.545;
- (k) RCW 28B.15.555;
- (l) RCW 28B.15.556;
- (m) RCW 28B.15.615;
- (n) RCW 28B.15.620;
- (o) RCW 28B.15.628;
- (p) RCW 28B.15.730;
- (q) RCW 28B.15.740;
- (r) RCW 28B.15.750;
- (s) RCW 28B.15.756;
- (t) RCW 28B.50.259;
- (u) RCW 28B.70.050;
- (v) RCW 28B.80.580; and

(w) During the 1997-99 fiscal biennium, the western interstate commission for higher education undergraduate exchange program for students attending Eastern Washington University.

(3) The limitations in subsection (1) of this section do not apply to waivers, exemptions, or reductions in services and activities fees contained in the following:

- (a) RCW 28B.15.522;

- (b) RCW 28B.15.540; and
- (c) RCW 28B.15.558.

(4) The total amount of operating fees revenue waived, exempted, or reduced by institutions of higher education participating in the western interstate commission for higher education western undergraduate exchange program under RCW 28B.15.544 shall not exceed the percentage of total gross authorized operating fees revenue in this subsection.

- | | |
|-----------------------------------|-----------|
| (a) Washington State University | 1 percent |
| (b) Eastern Washington University | 3 percent |
| (c) Central Washington University | 3 percent |

Passed the Senate March 6, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 153

[Senate Bill 6160]

STATE INVESTMENT BOARD—APPLICANTS' TRAVEL EXPENSES

AN ACT Relating to the state investment board; and amending RCW 43.03.130.

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

Sec. I. RCW 43.03.130 and 1993 c 93 s 1 are each amended to read as follows:

Any state office, commission, department or institution may agree to pay the travel expenses of a prospective employee as an inducement for such applicant to travel to a designated place to be interviewed by and for the convenience of such agency: PROVIDED, That if such employment is to be in the classified service, such offer may be made only on the express authorization of the state department of personnel, or other corresponding personnel agency as provided by chapter 41.06 RCW, to applicants reporting for a merit system examination or to applicants from an eligible register reporting for a pre-employment interview. Travel expenses authorized for prospective employees called for interviews shall be payable at rates in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. When an applicant is called to be interviewed by or on behalf of more than one agency, the authorized travel expenses may be paid directly by the authorizing personnel department or agency, subject to reimbursement from the interviewing agencies on a pro rata basis.

In the case of both classified and exempt positions, such travel expenses will be paid only for applicants being considered for the positions of director, deputy director, assistant director, or supervisor of state departments, boards or commissions; or equivalent or higher positions; or engineers, or other personnel having both executive and professional status. In the case of the state investment board, such travel expenses may also be paid for applicants being considered for

investment officer positions. In the case of four-year institutions of higher education, such travel expenses will be paid only for applicants being considered for academic positions above the rank of instructor or professional or administrative employees in supervisory positions. In the case of community and technical colleges, such travel expenses may be paid for applicants being considered for full-time faculty positions or administrative employees in supervisory positions.

Passed the Senate February 12, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 154

[Substitute Senate Bill 6194]

RURAL GARBAGE DISPOSAL

AN ACT Relating to unlawful rural garbage disposal; amending RCW 70.93.030, 70.93.060, 70.95.240, and 46.55.230; and prescribing penalties.

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

Sec. 1. RCW 70.93.030 and 1998 c 257 s 3 are each amended to read as follows:

As used in this chapter unless the context indicates otherwise:

(1) "Conveyance" means a boat, airplane, or vehicle;

(2) "Department" means the department of ecology;

~~((2))~~ (3) "Director" means the director of the department of ecology;

~~((3))~~ (4) "Disposable package or container" means all packages or containers defined as such by rules and regulations adopted by the department of ecology;

~~((4))~~ (5) "Junk vehicle" has the same meaning as defined in RCW 46.55.010;

(6) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing;

~~((5))~~ (7) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity;

~~((6))~~ (8) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter;

~~((7))~~ (9) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever;

~~((8))~~ (10) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests;

(11) "Recycling" means transforming or remanufacturing waste materials into a finished product for use other than landfill disposal or incineration;

~~((9))~~ (12) "Recycling center" means a central collection point for recyclable materials;

~~((10))~~ (13) "To litter" means a single or cumulative act of disposing of litter;

(14) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks;

~~((11))~~ (15) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials;

~~((12))~~ (16) "Watercraft" means any boat, ship, vessel, barge, or other floating craft;

~~((13))~~ "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests).

Sec. 2. RCW 70.93.060 and 1997 c 159 s 1 are each amended to read as follows:

(1) It is a violation of this section to abandon a junk vehicle upon any property located in an unincorporated area of a county. In addition, no person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or her or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

(a) When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;

(b) Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of said private or public property or waters.

(2)(a) Except as provided in subsection (4) of this section, it is a class 3 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount greater than one cubic foot in an incorporated area of a county. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.

(c) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard in an unincorporated area of a county. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more in an unincorporated area of a county. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(e) If a junk vehicle is abandoned in violation of this section, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(3) If the violation occurs in a state park, the court shall, in addition to any other penalties assessed, order the person to perform twenty-four hours of community service in the state park where the violation occurred if the state park has stated an intent to participate as provided in RCW ((43.51.048(2))) 79A.05.050.

(4) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to discard, in violation of this section, a cigarette, cigar, or other tobacco product that is capable of starting a fire.

Sec. 3. RCW 70.95.240 and 1998 c 36 s 19 are each amended to read as follows:

(1) After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit. This section does not:

(a) Prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when such action does not violate statutes or ordinances, or create a nuisance;

(b) Apply to a person using a waste-derived soil amendment that has been approved by the department under RCW 70.95.205; or

(c) Apply to the application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

(2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a class 1 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount greater than one cubic foot in an unincorporated area of a county. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.

(c) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard in an unincorporated area of a county. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more in an unincorporated area of a county. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(e) If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

Sec. 4. RCW 46.55.230 and 1991 c 292 s 2 are each amended to read as follows:

(1) Notwithstanding any other provision of law, any law enforcement officer having jurisdiction, or any employee or officer of a jurisdictional health department acting pursuant to RCW 70.95.240, or any person authorized by the director shall inspect and may authorize the disposal of an abandoned junk vehicle. The person making the inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the scrap in it.

(2) The law enforcement officer or department representative shall provide information on the vehicle's registered and legal owner to the landowner.

(3) Upon receiving information on the vehicle's registered and legal owner, the landowner shall mail a notice to the registered and legal owners shown on the records of the department. The notification shall describe the redemption procedure and the right to arrange for the removal of the vehicle.

(4) If the vehicle remains unclaimed more than fifteen days after the landowner has mailed notification to the registered and legal owner, the landowner may dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(5) If no information on the vehicle's registered and legal owner is found in the records of the department, the landowner may immediately dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(6)(a) It is a class 1 civil infraction as defined in RCW 7.80.120 for a person to abandon a junk vehicle on property located in an incorporated area. If a junk vehicle is abandoned in an incorporated area, the landowner of the property upon which the junk vehicle is located is entitled to recover from the vehicle's registered owner any costs incurred in the removal of the junk vehicle.

(b) It is a gross misdemeanor for a person to abandon a junk vehicle on property located in an unincorporated area. If a junk vehicle is abandoned in an unincorporated area, the vehicle's registered owner shall also pay a cleanup restitution payment equal to twice the costs incurred in the removal of the junk vehicle. The court shall distribute one-half of the restitution payment to the landowner of the property upon which the junk vehicle is located, and one-half of the restitution payment to the law enforcement agency or jurisdictional health department investigating the incident.

(7) For the purposes of this section, the term "landowner" includes a legal owner of private property, a person with possession or control of private property, or a public official having jurisdiction over public property.

(8) A person complying in good faith with the requirements of this section is immune from any liability arising out of an action taken or omission made in the compliance.

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 Senate March 9, 2000.

Passed the House March 8, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 155

[Senate Bill 6307]

COUNTY ROADS

AN ACT Relating to county roads that cross county boundaries; and amending RCW 36.75.160 and 36.75.210.

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

Sec. I. RCW 36.75.160 and 1963 c 4 s 36.75.160 are each amended to read as follows:

The board of county commissioners of any county may erect and construct or acquire by purchase, gift, or condemnation, any bridge, trestle, or any other structure which crosses any stream, body of water, gulch, navigable water, swamp or other topographical formation requiring such structure for the continuation or connection of any county road if such topographical formation constitutes the boundary of a city, town, another county or the state of Washington or another state or a county, city or town of such other state.

The board of such county may join with such city, town, other county, the state of Washington, or other state, or a county, city or town of such other state in paying for, erecting, constructing, acquiring by purchase, gift, or condemnation any such bridge, trestle, or other structure, and the purchase or condemnation of right of way therefor.

The board of any county may construct, maintain, and operate any county road which forms the boundary line between another county within the state or another county in any other state or which through its meandering crosses ~~((and-recrosses))~~ such boundary; and acquire by purchase or condemnation any lands or rights within this state, either within or without its county, necessary for such boundary road; and enter into joint contracts with authorities of adjoining counties for the construction, operation, and maintenance of such boundary roads. The power of condemnation herein granted may be exercised jointly by two counties in the manner provided in RCW 36.75.170 for bridges, or it may be exercised by a single county in the manner authorized by law.

Sec. 2. RCW 36.75.210 and 1963 c 4 s 36.75.210 are each amended to read as follows:

Whenever a county road is established within any county, and such county road crosses the boundary of the county (~~and again enters the county~~), the board of the county within which the major portion of the road is located may expend the county road fund of such county in laying out, establishing, constructing, altering, repairing, improving, and maintaining that portion of the road lying outside the county, in the manner provided by law for the expenditure of county funds for the construction, alteration, repair, improvement, and maintenance of county roads within the county.

The board of any county may construct, maintain, and operate any county road which forms the boundary line between another county within the state or another county in any other state or which through its meandering crosses (~~and recrosses~~) such boundary; and acquire by purchase or condemnation any lands or rights within this state, either within or without its county, necessary for such boundary road; and enter into joint contracts with authorities of adjoining counties for the construction, operation, and maintenance of such boundary roads. The power of condemnation herein granted may be exercised jointly by two counties in the manner provided for bridges, or it may be exercised by a single county in the manner authorized by law.

Passed the Senate February 9, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 156

[Senate Bill 6748]

LOCAL GOVERNMENT DEBT LIMITS

AN ACT Relating to increasing a city or town debt limit for purposes of financing capital facilities associated with economic development; amending RCW 39.36.020; and declaring an emergency.

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

Sec. 1. RCW 39.36.020 and 1994 c 277 s 1 are each amended to read as follows:

(1) Except as otherwise expressly provided by law or in subsections (2), (3) and (4) of this section, no taxing district shall for any purpose become indebted in any manner to an amount exceeding three-eighths of one percent of the value of the taxable property in such taxing district without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness incurred at any time exceed one and one-fourth percent on the value of the taxable property therein.

(2)(a)(i) Public hospital districts are limited to an indebtedness amount not exceeding three-fourths of one percent of the value of the taxable property in such

public hospital districts without the assent of three-fifths of the voters therein voting at an election held for that purpose.

(i) Counties, cities, and towns are limited to an indebtedness amount not exceeding one and one-half percent of the value of the taxable property in such counties, cities, or towns without the assent of three-fifths of the voters therein voting at an election held for that purpose.

(b) In cases requiring such assent counties, cities, towns, and public hospital districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein. However, any county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW may become indebted to a larger amount for its authorized metropolitan functions, as provided under chapter 35.58 RCW, but not exceeding an additional three-fourths of one percent of the value of the taxable property in the county without the assent of three-fifths of the voters therein voting at an election held for that purpose, and in cases requiring such assent not exceeding an additional two and one-half percent of the value of the taxable property in the county.

(3) School districts are limited to an indebtedness amount not exceeding three-eighths of one percent of the value of the taxable property in such district without the assent of three-fifths of the voters therein voting at an election held for that purpose. In cases requiring such assent school districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein.

(4) No part of the indebtedness allowed in this chapter shall be incurred for any purpose other than strictly county, city, town, school district, township, port district, metropolitan park district, or other municipal purposes: PROVIDED, That a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional, determined as herein provided, for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the city or town; and a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional for acquiring or developing open space (~~and~~), park facilities, and capital facilities associated with economic development: PROVIDED FURTHER, That any school district may become indebted to a larger amount but not exceeding two and one-half percent additional for capital outlays.

(5) Such indebtedness may be authorized in any total amount in one or more propositions and the amount of such authorization may exceed the amount of indebtedness which could then lawfully be incurred. Such indebtedness may be incurred in one or more series of bonds from time to time out of such authorization but at no time shall the total general indebtedness of any taxing district exceed the above limitation.

The term "value of the taxable property" as used in this section shall have the meaning set forth in RCW 39.36.015.

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

Passed the Senate February 11, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 157

[Substitute House Bill 2332]

STUDENT GROUPS—CHARITABLE FUND-RAISING

AN ACT Relating to associated student body fund-raising activities; amending RCW 28A.325.030; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that current law permits associated student bodies to conduct fund-raising activities, including but not limited to soliciting donations, to raise money for school sports programs and school clubs. However, students also want to conduct fund-raising activities for charitable causes, such as to fund scholarships and student exchange programs, assist families whose homes have been destroyed, to fund community projects, and to rebuild the Statue of Liberty.

The legislature further finds that current law is not clear how student groups may raise funds for charitable purposes, whether proceeds from any fund-raising activities can be used for charitable purposes or only donations may be used for charitable purposes, and whether recipients must be "poor or infirm." This has resulted in considerable confusion on the part of students regarding what type of fund-raising is permissible when funds are raised for charitable purposes by student groups.

It is the intent of the legislature to allow students to broaden the types of fund-raisers that they may conduct for charitable purposes in their private nonassociated student body capacities, and ensure that these funds will be separate from student body funds to avoid constitutional issues pertaining to the gifting of public funds.

Sec. 2. RCW 28A.325.030 and 1990 c 33 s 340 are each amended to read as follows:

(1)(a) There is hereby created a fund on deposit with each county treasurer for each school district of the county having an associated student body as defined in RCW 28A.325.020. Such fund shall be known as the associated student body program fund. Rules ~~((and regulations promulgated))~~ adopted by the superintendent of public instruction under RCW 28A.325.020 shall require

separate accounting for each associated student body's transactions in the school district's associated student body program fund.

(b) All moneys generated through the programs and activities of any associated student body shall be deposited in the associated student body program fund. Such funds may be invested for the sole benefit of the associated student body program fund in items enumerated in RCW 28A.320.320 and the county treasurer may assess a fee as provided therein. Disbursements from such fund shall be under the control and supervision, and with the approval, of the board of directors of the school district, and shall be by warrant as provided in chapter 28A.350 RCW: PROVIDED, That in no case shall such warrants be issued in an amount greater than the funds on deposit with the county treasurer in the associated student body program fund. To facilitate the payment of obligations, an imprest bank account or accounts may be created and replenished from the associated student body program fund.

(c) The associated student body program fund shall be budgeted by the associated student body, subject to approval by the board of directors of the school district. All disbursements from the associated student body program fund or any imprest bank account established thereunder shall have the prior approval of the appropriate governing body representing the associated student body. Notwithstanding the provisions of RCW 43.09.210, it shall not be mandatory that expenditures from the district's general fund in support of associated student body programs and activities be reimbursed by payments from the associated student body program fund.

~~((Nothing in this section shall prevent those portions of student-generated moneys in the associated student body program fund, budgeted or otherwise, which constitute bona fide voluntary donations and are identified as donations at the time of collection from being used for such scholarship, student exchange and charitable purposes as the appropriate governing body representing the associated student body shall determine, and for such purposes, said moneys shall not be deemed public moneys under section 7, Article VIII, of the state Constitution.))~~

(2) Subject to applicable school board policies, student groups may conduct fund-raising activities, including but not limited to soliciting donations, in their private capacities for the purpose of generating nonassociated student body fund moneys. The school board policy shall include provisions to ensure appropriate accountability for these funds. Nonassociated student body program fund moneys generated and received by students for private purposes((, including but not limited)) to use for scholarship, student exchange, and/or charitable purposes((, may, in the discretion of the board of directors of any school district,)) shall be held in trust in one or more separate accounts within an associated student body program fund and be disbursed for such purposes as the student group conducting the fund-raising activity shall determine: PROVIDED, That the school district shall either withhold an amount from such moneys as will pay the district for its direct costs in providing the service or otherwise be compensated for its cost for

such service. Nonassociated student body program fund moneys shall not be deemed public moneys under section 7, Article VIII of the state Constitution. Notice shall be given identifying the intended use of the proceeds. The notice shall also state that the proceeds are nonassociated student body funds to be held in trust by the school district exclusively for the intended purpose. "Charitable purpose" under this section does not include any activity related to assisting a campaign for election of a person to an office or for the promotion or opposition to a ballot proposition.

Passed the House March 4, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 158

[Engrossed House Bill 2334]

NET METERING SYSTEMS

AN ACT Relating to the definition of net metering system; and amending RCW 80.60.010, 80.60.020, and 80.60.040.

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

Sec. 1. RCW 80.60.010 and 1998 c 318 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Commission" means the utilities and transportation commission.

(2) "Customer-generator" means a user of a net metering system.

(3) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(4) "Electric cooperative" means a cooperative or association organized under chapter 23.86 or 24.06 RCW.

(5) "Electric utility" means any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state.

(6) "Irrigation district" means an irrigation district under chapter 87.03 RCW.

(7) "Municipal electric utility" means a city or town that owns or operates an electric utility authorized by chapter 35.92 RCW.

(8) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator that is fed back to the electric utility over the applicable billing period.

(9) "Net metering system" means a fuel cell or a facility for the production of electrical energy that:

(a) Uses as its fuel either solar, wind, or hydropower;

- (b) Has a generating capacity of not more than twenty-five kilowatts;
- (c) Is located on the customer-generator's premises;
- (d) Operates in parallel with the electric utility's transmission and distribution facilities; and
- (e) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(10) "Port district" means a port district within which an industrial development district has been established as authorized by Title 53 RCW.

(11) "Public utility district" means a district authorized by chapter 54.04 RCW.

Sec. 2. RCW 80.60.020 and 1998 c 318 s 3 are each amended to read as follows:

An electric utility:

(1) Shall offer to make net metering available to eligible customers-generators on a first-come, first-served basis until the cumulative generating capacity of net metering systems equals 0.1 percent of the utility's peak demand during 1996, of which not less than 0.05 percent shall be attributable to net metering systems that use as its fuel either solar, wind, or hydropower;

(2) Shall allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment:

(a) That the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(b) How the cost of purchasing and installing an additional meter is to be allocated between the customer-generator and the utility;

(3) Shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class, but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment that:

(a) The electric utility will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these systems; and

(b) Public policy is best served by imposing these costs on the customer-generator rather than allocating these costs among the utility's entire customer base.

Sec. 3. RCW 80.60.040 and 1998 c 318 s 5 are each amended to read as follows:

(1) A net metering system used by a customer-generator shall include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, the institute of electrical and electronics engineers, and underwriters laboratories.

(2) The commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, after appropriate notice and opportunity for comment, may adopt by regulation additional safety, power quality, and interconnection requirements for customer-generators that the commission or governing body determines are necessary to protect public safety and system reliability.

(3) An electric utility may not require a customer-generator whose net metering system meets the standards in subsections (1) and (2) of this section to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance. However, an electric utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering system, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.

Passed the House February 10, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 159

[Substitute House Bill 2022]

NATIONAL GUARD SCHOLARSHIP PROGRAM

AN ACT Relating to expanding the national guard scholarship program; and amending RCW 28B.103.010.

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

Sec. 1. RCW 28B.103.010 and 1994 c 234 s 5 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 28B.103.020 and 28B.103.030.

(1) "Eligible student" means an enlisted member or an officer of the rank of captain or below in the Washington national guard who ~~((is a resident student as defined in RCW 28B.15.012 and 28B.15.013, who))~~ attends an institution of higher education that is located in this state and accredited by the Northwest Association of Schools and Colleges, and who meets any additional selection criteria adopted by the office.

(2) "Conditional scholarship" means a loan that is forgiven in whole or in part if the recipient renders service as a member of the Washington national guard under rules adopted by the office.

(3) "Forgiven" or "to forgive" or "forgiveness" means either to render service in the Washington national guard in lieu of monetary repayment, or to be relieved of the service obligation under rules adopted by the office.

(4) "Office" means the office of the adjutant general of the state military department.

(5) "Participant" means an eligible student who has received a conditional scholarship under this chapter.

(6) "Service obligation" means serving in the Washington national guard for one additional year for each year of conditional scholarship received under this program.

Passed the House February 3, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 160

[House Bill 2904]

BORDER COUNTY HIGHER EDUCATION OPPORTUNITY PILOT PROJECT

AN ACT Relating to the border county higher education opportunity pilot project; amending RCW 28B.15.012, 28B.15.0139, and 28B.80.806; and providing an expiration date.

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

Sec. 1. RCW 28B.15.012 and 1999 c 320 s 5 are each amended to read as follows:

Whenever used in chapter 28B.15 RCW:

(1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal

guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state;

(f) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725; or

(g) A student who meets the requirements of RCW 28B.15.0131 or 28B.15.0139: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of RCW 28B.15.012 and 28B.15.013. Except for students qualifying under subsection (2)(f) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter. This condition shall not apply to students from Columbia, Multnomah, Clatsop, Clackamas, or Washington county, Oregon participating in the border county pilot project under RCW 28B.80.806, 28B.80.807, and 28B.15.0139.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in RCW 28B.15.012 and 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the

higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require.

Sec. 2. RCW 28B.15.0139 and 1999 c 320 s 4 are each amended to read as follows:

For the purposes of determining resident tuition rates, "resident student" includes a resident of Oregon, residing in Columbia, Multnomah, Clatsop, Clackamas, or Washington county, who meets the following conditions:

(1) The student is eligible to pay resident tuition rates under Oregon laws and has been domiciled in Columbia, Multnomah, Clatsop, Clackamas, or Washington county for at least ninety consecutive days immediately before enrollment at a community college located in Clark, Cowlitz, Wahkiakum, or Pacific county, Washington; or

(2) The student is enrolled in courses located at the Vancouver branch of Washington State University for eight credits or less.

Sec. 3. RCW 28B.80.806 and 1999 c 320 s 2 are each amended to read as follows:

(1) The border county higher education opportunity pilot project is created. The purpose of the pilot project is to allow four Washington institutions of higher education that are located in four counties on the Oregon border to implement, on a trial basis, tuition policies that correspond to Oregon policies. Under the border county pilot project, Lower Columbia Community College, Grays Harbor Community College, and Clark Community College may enroll students who reside in the bordering Oregon counties of Columbia, Multnomah, Clatsop, Clackamas, and Washington at resident tuition rates. The Vancouver branch of Washington State University may enroll students who reside in the bordering Oregon counties of Columbia, Multnomah, Clatsop, Clackamas, and Washington for eight credits or less at resident tuition rates.

(2) Washington institutions of higher education participating in the pilot project shall give priority program enrollment to Washington residents.

NEW SECTION. **Sec. 4.** This act expires June 30, 2002.

Passed the House February 9, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 161

[Substitute House Bill 2528]

CAPACITY CHARGES

AN ACT Relating to capacity charges for sewage facilities to enhance water quality; and amending RCW 35.58.570.

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

Sec. 1. RCW 35.58.570 and 1996 c 230 s 1602 are each amended to read as follows:

(1) A metropolitan municipal corporation that is engaged in the transmission, treatment, and disposal of sewage may impose a capacity charge on users of the metropolitan municipal corporation's sewage facilities when the user connects, reconnects, or establishes a new service to sewer facilities of a city, county, or special district that discharges into the metropolitan facilities. ~~((The capacity charge shall be approved by the council of the metropolitan municipal corporation and reviewed and reapproved annually.~~

~~—(2))~~ The capacity charge shall be based upon the cost of the sewage facilities' excess capacity that is necessary to provide sewerage treatment for new users to the system. ~~((The capacity charge, which may be collected over a period of fifteen years, shall not exceed:~~

~~—(a) Seven dollars per month per residential customer equivalent for connections and reconnections occurring prior to January 1, 1996; and~~

~~—(b) Ten dollars and fifty cents per month per residential customer equivalent for connections and reconnections occurring after January 1, 1996, and prior to January 1, 2001.~~

~~—For connections and reconnections occurring after January 1, 2001, the capacity charge shall not exceed fifty percent of the basic sewer rate per residential customer equivalent established by the metropolitan municipal corporation at the time of the connection or reconnection.~~

~~—(3) The capacity charge for a building other than a single-family residence shall be based on the projected number of residential customer equivalents to be represented by the building, considering its intended use.~~

~~—(4))~~ (2) The capacity charge is a monthly charge reviewed and approved annually by the metropolitan council. A metropolitan municipal corporation may charge property owners seeking to connect to the sewage facilities of the metropolitan municipal corporation as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable capacity charge as the legislative body of the metropolitan municipal corporation shall determine proper in order that such property owners shall bear their equitable share of the cost of such system. The equitable share may include interest charges applied from the date of construction of the sewage facilities until the connection, or for a period not to exceed ten years, at a rate commensurate with the rate of interest applicable to the metropolitan municipal corporation at the time of construction or major rehabilitation of the sewage facilities, or at the time of installation of the sewer lines to which the property owner is seeking to connect but not to exceed ten percent per year: PROVIDED, That the aggregate amount of interest shall not exceed the equitable share of the cost of the sewage facilities allocated to such property owners. Capacity charges collected shall be considered revenue of the sewage facilities.

(3) The council of the metropolitan municipal corporation shall enforce the collection of the capacity charge in the same manner provided for the collection, enforcement, and payment of rates and charges for water-sewer districts provided in RCW 57.08.081. At least thirty days before commencement of an action to foreclose a lien for a capacity charge, the metropolitan municipal corporation shall send written notice of delinquency in payment of the capacity charge to any first mortgage or deed of trust holder of record at the address of record.

~~((5) As used in this section, "sewage facilities" means capital projects identified since January 1, 1982, to July 23, 1989, in the metropolitan municipal corporation's comprehensive water pollution abatement plan. "Residential customer equivalent" shall have the same meaning used by the metropolitan municipal corporation in determining rates and charges at the time the capacity charge is imposed.))~~

Passed the House February 10, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 162

[Substitute House Bill 2372]

JUVENILE DETENTION

AN ACT Relating to children; amending RCW 13.32A.060, 13.32A.065, 13.32A.130, 13.32A.250, 28A.225.090, 74.13.033, 74.13.034, 13.32A.060, 13.32A.065, 13.32A.130, 13.32A.250, 28A.225.090, 74.13.033, 74.13.034, 13.50.100, 26.44.020, and 74.15.030; adding new sections to chapter 13.32A RCW; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 13.32A.060 and 1997 c 146 s 3 are each amended to read as follows:

(1) An officer taking a child into custody under RCW 13.32A.050(1) (a) or (b) shall inform the child of the reason for such custody and shall:

(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 parent may request that the officer take the child to the home of an adult extended family member, responsible adult, crisis residential center, the department, or a licensed youth shelter. In responding to the request of the parent, the officer shall take the child to a requested place which, in the officer's belief, is within a reasonable distance of the parent's home. The officer releasing a child into the custody of a parent, an adult extended family member, responsible adult, or a licensed youth shelter shall inform the person receiving the child of the reason for taking the child into custody and inform all parties of the nature and location of appropriate services available in the community; or

(b) After attempting to notify the parent, take the child to a designated crisis residential 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 some type of child abuse or neglect, as defined in RCW 26.44.020;

(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; or

(c) After attempting to notify the parent, if a crisis residential center is full, not available, or not located within a reasonable distance, the officer may request the department to accept custody of the child. If the department determines that an appropriate placement is currently available, the department shall accept custody and place the child in an out-of-home placement. Upon accepting custody of a child from the officer, the department may place the child in an out-of-home placement for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, without filing a child in need of services petition under this chapter, obtaining parental consent, or obtaining an order for placement under chapter 13.34 RCW. Upon transferring a child to the department's custody, the officer shall provide written documentation of the reasons and the statutory basis for taking the child into custody. If the department declines to accept custody of the child, the officer may release the child after attempting to take the child to the following, in the order listed: The home of an adult extended family member; a responsible adult; a licensed youth shelter and shall immediately notify the department if no placement option is available and the child is released.

(2) An officer taking a child into custody under RCW 13.32A.050(1) (c) or (d) shall inform the child of the reason for custody. An officer taking a child into custody under RCW 13.32A.050(1)(c) may release the child to the supervising agency, or shall take the child to a designated crisis residential center's secure facility. If the secure facility is not available, not located within a reasonable distance, or full, the officer shall take the child to a semi-secure crisis residential center. An officer taking a child into custody under RCW 13.32A.050(1)(d) may place the child in a juvenile detention facility as provided in RCW 13.32A.065 or a secure facility, except that the child shall be taken to either (a) a secure facility that is a separate, secure section of a juvenile detention facility; or (b) detention whenever the officer has been notified that a juvenile court has entered ((a detention)) an order directing such placement under this chapter or chapter 13.34 RCW. In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.

(3) Whenever an officer transfers custody of a child to a crisis residential center or the department, the child may reside in the crisis residential center or may be placed by the department in an out-of-home placement for an aggregate total period of time not to exceed seventy-two hours excluding Saturdays, Sundays, and

holidays, except that a child placed in a secure facility under a court order entered under RCW 13.32A.250 must remain in the secure facility as provided in RCW 13.32A.065. Thereafter, the child may continue in out-of-home placement only if the parents have consented, a child in need of services petition has been filed under this chapter, or an order for placement has been entered under chapter 13.34 RCW.

(4) The department shall ensure that all law enforcement authorities are informed on a regular basis as to the location of all designated secure and semi-secure facilities within centers in their jurisdiction, where children taken into custody under RCW 13.32A.050 may be taken.

Sec. 2. RCW 13.32A.065 and 1996 c 133 s 12 are each amended to read as follows:

(1) A child may be placed in either (a) a secure facility that is a separate, secure section of a juvenile detention facility; or (b) detention after being taken into custody pursuant to RCW 13.32A.050(1)(d). In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility. The court shall hold a ~~((detention))~~ review hearing within twenty-four hours, excluding Saturdays, Sundays, and holidays. The court shall release the child after twenty-four hours, excluding Saturdays, Sundays, and holidays, unless:

(a) A motion and order to show why the child should not be held in contempt has been filed and served on the child at or before the detention hearing; and

(b) The court believes that the child would not appear at a hearing on contempt.

(2) If the court ~~((orders the child to remain in detention))~~ finds that the conditions in subsection (1)(a) and (b) of this section have been met, the court may order the child to remain confined either in (a) a secure facility that is a separate, secure section of a juvenile detention facility; or (b) detention, and shall set the matter for a hearing on contempt within seventy-two hours, excluding Saturdays, Sundays, and holidays. In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.

Sec. 3. RCW 13.32A.130 and 1997 c 146 s 4 are each amended to read as follows:

(1) A child admitted to a secure facility within a crisis residential center shall remain in the facility for not more than five consecutive days, but for at least twenty-four hours after admission. If the child admitted under this section is transferred between centers or between secure and semi-secure facilities, the aggregate length of time spent in all such centers or facilities may not exceed five consecutive days.

(2)(a)(i) The facility administrator shall determine within twenty-four hours after a child's admission to a secure facility whether the child is likely to remain in a semi-secure facility and may transfer the child to a semi-secure facility or release the child to the department. 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 consider the following information if known: (A) The 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 the assessment.

(b) If the administrator of a secure facility 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 only 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 he or she reasonably believes that the child is likely to leave the semi-secure facility and not return and after full consideration of all factors in (a)(i) and (ii) of this subsection.

(3) If no parent is available or willing to remove the child during the first seventy-two hours following admission, the department shall consider the filing of a petition under RCW 13.32A.140.

(4) 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 or any agency legally charged with the supervision of a child may remove a child from a crisis residential center at any time after the first twenty-four-hour period after admission has elapsed and only after full consideration by all parties of the factors in subsection (2)(a) of this section.

(5) Crisis residential center staff shall make 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 administrator of the center does not consider it likely that reconciliation will be achieved within the five-day period, then the administrator shall inform the parent and child of: (a) The availability of counseling services; (b) the right to file a child in need of services petition for an 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; (d) the right to request a review of any out-of-home placement; (e) the right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and (f) the right to request treatment in a program to address the child's at-risk behavior under RCW 13.32A.197.

(6) At no time shall information regarding a parent's or child's rights be withheld. 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.

(7) 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.

(8) This section does not apply to children admitted to a secure facility that is a separate, secure section of a juvenile detention facility under a court order issued under RCW 13.32A.250(3) or 28A.225.090(2). In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.

Sec. 4. RCW 13.32A.250 and 1998 c 296 s 37 are each amended to read as follows:

(1) In all 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. Except as otherwise provided in this section, 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 civil contempt of court as provided in RCW 7.21.030(2)(e), subject to the limitations of subsection (3) of this section.

(3) The court may impose remedial sanctions including a fine of up to one hundred dollars and confinement for up to seven days, or both for contempt of court under this section.

(4) A child placed in confinement for contempt under this section shall be placed in confinement (~~only~~) either in a secure juvenile detention facility operated by or pursuant to a contract with a county or a secure facility that is a separate, secure section of a juvenile detention facility. In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.

(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.

(6) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention or to a secure facility. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention or to the secure facility, a ((detention)) review hearing must be held in accordance with RCW 13.32A.065.

NEW SECTION. **Sec. 5.** A new section is added to chapter 13.32A RCW to read as follows:

No placement of a juvenile in a secure facility under RCW 13.32A.060, 13.32A.065, 13.32A.130, 13.32A.250, 28A.225.090, 74.13.033, or 74.13.034 as a result of an order entered under RCW 13.32A.250 or 28A.225.090(2) may displace, or prevent the placement of, a juvenile in a secure facility under RCW 13.32A.050, 13.32A.060, or 13.32A.130. If a secure facility is located in a separate, secure section of a juvenile detention facility, no more than fifty percent of its capacity may be occupied by juveniles placed under RCW 13.32A.250 or 28A.225.090(2). If any capacity of a secure facility located in a juvenile detention facility is taken by a juvenile placed under RCW 13.32A.250 or 28A.225.090 and a juvenile is brought to the secure facility under RCW 13.32A.050, 13.32A.060, or 13.32A.130, that juvenile must be placed in the secure facility and a juvenile placed under RCW 13.32A.250 or 28A.225.090 be moved immediately to the juvenile detention facility.

Sec. 6. RCW 28A.225.090 and 1999 c 319 s 4 are each amended to read as follows:

(1) A court may order a child subject to a petition under RCW 28A.225.035 to:

- (a) Attend the child's current school;
- (b) If there is space available and the program can provide educational services appropriate for the child, order the child to attend another public school, an alternative education program, center, a skill center, dropout prevention program, or another public educational program;
- (c) Attend a private nonsectarian school or program including an education center. Before ordering a child to attend an approved or certified private nonsectarian school or program, the court shall: (i) Consider the public and private programs available; (ii) find that placement is in the best interest of the child; and (iii) find that the private school or program is willing to accept the child and will not charge any fees in addition to those established by contract with the student's school district. If the court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide

educational services for the child. The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district. A school district shall not be required to enter into a contract that is longer than the remainder of the school year. A school district shall not be required to enter into or continue a contract if the child is no longer enrolled in the district;

(d) Be referred to a community truancy board, if available; or

(e) Submit to testing for the use of controlled substances or alcohol based on a determination that such testing is appropriate to the circumstances and behavior of the child and will facilitate the child's compliance with the mandatory attendance law.

(2) If the child fails to comply with the court order, the court may order the child to be ~~((subject to detention, as provided in RCW 7.21.030(2)(e)))~~ placed in confinement for contempt, either in a juvenile detention facility operated by or under a contract with a county or in a secure facility that is a separate, secure section of a juvenile detention facility, or may impose alternatives to ~~((detention))~~ confinement such as community service. Failure by a child to comply with an order issued under this subsection shall not be subject to detention for a period greater than that permitted pursuant to a civil contempt proceeding against a child under chapter 13.32A RCW. In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.

(3) Any parent violating any of the provisions of either RCW 28A.225.010, 28A.225.015, or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. 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 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 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 child in a supervised plan for the 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.

(4) If a child continues to be truant after entering into a court-approved order with the truancy board under RCW 28A.225.035, the juvenile court shall find the child in contempt, and the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to detention such as meaningful community service. Failure by a child to comply with an order issued under this subsection may not subject a child to detention for a period greater than that permitted under a civil contempt proceeding against a child under chapter 13.32A RCW.

(5) Subsections (1), (2), and (4) of this section shall not apply to a six or seven year-old child required to attend public school under RCW 28A.225.015.

Sec. 7. RCW 74.13.033 and 1995 c 312 s 62 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. A child confined in a secure facility that is a separate, secure section of a juvenile detention facility under RCW 13.32A.250(3) or 28A.225.090(2) may be moved to an available bed in a juvenile detention facility. In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.

(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;

(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 or, in the case of a child admitted by court order issued under RCW 13.32A.250(3) or 28A.225.090(2), seven 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 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 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. 8. RCW 74.13.034 and 1995 c 312 s 63 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 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, the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both locations shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130 or, in the case of a child admitted by court order issued under RCW 13.32A.250(3) or 28A.225.090(2), seven consecutive days.

(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 or, in the case of a child admitted by court order issued under RCW 13.32A.250(3) or 28A.225.090(2), seven consecutive days.

(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.

NEW SECTION. Sec. 9. A new section is added to chapter 13.32A RCW to read as follows:

The department has no responsibility to attend hearings, provide transportation, case management, or any other services to youth confined in a secure facility that is a separate, secure section of a juvenile detention facility unless it is otherwise ordered by a court under a petition relating to a child in need of services, an at-risk youth, or truancy.

NEW SECTION. Sec. 10. A new section is added to chapter 13.32A RCW to read as follows:

The cost to county juvenile court administrators of housing youths held in contempt and confined in secure crisis residential centers located in juvenile detention facilities shall be credited against the funds appropriated to fund the costs of processing truancy, children in need of services, and at-risk youth petitions.

Sec. 11. RCW 13.32A.060 and 2000 c . . . s 1 (section 1 of this act) are each amended to read as follows:

(1) An officer taking a child into custody under RCW 13.32A.050(1) (a) or (b) shall inform the child of the reason for such custody and shall:

(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 parent may request that the officer take the child to the home of an adult extended family member, responsible adult, crisis residential center, the department, or a licensed youth shelter. In responding to the request of the parent, the officer shall take the child to a requested place which, in the officer's belief, is within a reasonable distance of the parent's home. The officer releasing a child into the custody of a parent, an adult extended family member, responsible adult, or a licensed youth shelter shall inform the person receiving the child of the reason for taking the child into custody and inform all parties of the nature and location of appropriate services available in the community; or

(b) After attempting to notify the parent, take the child to a designated crisis residential 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 some type of child abuse or neglect, as defined in RCW 26.44.020;

(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; or

(c) After attempting to notify the parent, if a crisis residential center is full, not available, or not located within a reasonable distance, the officer may request the department to accept custody of the child. If the department determines that an appropriate placement is currently available, the department shall accept custody and place the child in an out-of-home placement. Upon accepting custody of a child from the officer, the department may place the child in an out-of-home

placement for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, without filing a child in need of services petition under this chapter, obtaining parental consent, or obtaining an order for placement under chapter 13.34 RCW. Upon transferring a child to the department's custody, the officer shall provide written documentation of the reasons and the statutory basis for taking the child into custody. If the department declines to accept custody of the child, the officer may release the child after attempting to take the child to the following, in the order listed: The home of an adult extended family member; a responsible adult; a licensed youth shelter and shall immediately notify the department if no placement option is available and the child is released.

(2) An officer taking a child into custody under RCW 13.32A.050(1) (c) or (d) shall inform the child of the reason for custody. An officer taking a child into custody under RCW 13.32A.050(1)(c) may release the child to the supervising agency, or shall take the child to a designated crisis residential center's secure facility. If the secure facility is not available, not located within a reasonable distance, or full, the officer shall take the child to a semi-secure crisis residential center. An officer taking a child into custody under RCW 13.32A.050(1)(d) may place the child in a juvenile detention facility as provided in RCW 13.32A.065 or a secure facility, except that the child shall be taken to ~~((either (a) a secure facility that is a separate, secure section of a juvenile detention facility; or (b)))~~ detention whenever the officer has been notified that a juvenile court has entered ~~((an))~~ a detention order ~~((directing such placement))~~ under this chapter or chapter 13.34 RCW. ~~((In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.))~~

(3) Whenever an officer transfers custody of a child to a crisis residential center or the department, the child may reside in the crisis residential center or may be placed by the department in an out-of-home placement for an aggregate total period of time not to exceed seventy-two hours excluding Saturdays, Sundays, and holidays ~~((except that a child placed in a secure facility under a court order entered under RCW 13.32A.250 must remain in the secure facility as provided in RCW 13.32A.065))~~. Thereafter, the child may continue in out-of-home placement only if the parents have consented, a child in need of services petition has been filed under this chapter, or an order for placement has been entered under chapter 13.34 RCW.

(4) The department shall ensure that all law enforcement authorities are informed on a regular basis as to the location of all designated secure and semi-secure facilities within centers in their jurisdiction, where children taken into custody under RCW 13.32A.050 may be taken.

Sec. 12. RCW 13.32A.065 and 2000 c . . . s 2 (section 2 of this act) are each amended to read as follows:

(1) A child may be placed in ~~((either (a) a secure facility that is a separate, secure section of a juvenile detention facility; or (b)))~~ detention after being taken into custody pursuant to RCW 13.32A.050(1)(d). ~~((In no case may a child in~~

~~contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.)~~ The court shall hold a detention review hearing within twenty-four hours, excluding Saturdays, Sundays, and holidays. The court shall release the child after twenty-four hours, excluding Saturdays, Sundays, and holidays, unless:

(a) A motion and order to show why the child should not be held in contempt has been filed and served on the child at or before the detention hearing; and

(b) The court believes that the child would not appear at a hearing on contempt.

(2) If the court ~~((finds that the conditions in subsection (1)(a) and (b) of this section have been met))~~ orders the child to remain in detention, the court ~~((may order the child to remain confined either in (a) a secure facility that is a separate, secure section of a juvenile detention facility; or (b) detention, and))~~ shall set the matter for a hearing on contempt within seventy-two hours, excluding Saturdays, Sundays, and holidays. ~~((In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.))~~

Sec. 13. RCW 13.32A.130 and 2000 c . . . s 3 (section 3 of this act) are each amended to read as follows:

(1) A child admitted to a secure facility within a crisis residential center shall remain in the facility for not more than five consecutive days, but for at least twenty-four hours after admission. If the child admitted under this section is transferred between centers or between secure and semi-secure facilities, the aggregate length of time spent in all such centers or facilities may not exceed five consecutive days.

(2)(a)(i) The facility administrator shall determine within twenty-four hours after a child's admission to a secure facility whether the child is likely to remain in a semi-secure facility and may transfer the child to a semi-secure facility or release the child to the department. 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 consider the following information if known: (A) The 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 the assessment.

(b) If the administrator of a secure facility 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 only 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 he or she reasonably believes that the child is likely to leave the semi-secure facility and not return and after full consideration of all factors in (a)(i) and (ii) of this subsection.

(3) If no parent is available or willing to remove the child during the first seventy-two hours following admission, the department shall consider the filing of a petition under RCW 13.32A.140.

(4) 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 or any agency legally charged with the supervision of a child may remove a child from a crisis residential center at any time after the first twenty-four-hour period after admission has elapsed and only after full consideration by all parties of the factors in subsection (2)(a) of this section.

(5) Crisis residential center staff shall make 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 administrator of the center does not consider it likely that reconciliation will be achieved within the five-day period, then the administrator shall inform the parent and child of: (a) The availability of counseling services; (b) the right to file a child in need of services petition for an 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; (d) the right to request a review of any out-of-home placement; (e) the right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and (f) the right to request treatment in a program to address the child's at-risk behavior under RCW 13.32A.197.

(6) At no time shall information regarding a parent's or child's rights be withheld. 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.

(7) 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.

~~((8) This section does not apply to children admitted to a secure facility that is a separate, secure section of a juvenile detention facility under a court order issued under RCW 13.32A.250(3) or 28A.225.090(2). In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.))~~

Sec. 14. RCW 13.32A.250 and 2000 c . . . s 4 (section 4 of this act) are each amended to read as follows:

(1) In all 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. Except as otherwise provided in this section, 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 civil contempt of court as provided in RCW 7.21.030(2)(e), subject to the limitations of subsection (3) of this section.

(3) The court may impose remedial sanctions including a fine of up to one hundred dollars and confinement for up to seven days, or both for contempt of court under this section.

(4) A child placed in confinement for contempt under this section shall be placed in confinement ~~((either))~~ only in a secure juvenile detention facility operated by or pursuant to a contract with a county ~~((or a secure facility that is a separate, secure section of a juvenile detention facility. In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.))~~

(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.

(6) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention ~~((or to a secure facility))~~. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention ~~((or to the secure facility))~~, a detention review hearing must be held in accordance with RCW 13.32A.065.

Sec. 15. RCW 28A.225.090 and 2000 c . . . s 6 (section 6 of this act) are each amended to read as follows:

(1) A court may order a child subject to a petition under RCW 28A.225.035 to:

(a) Attend the child's current school;

(b) If there is space available and the program can provide educational services appropriate for the child, order the child to attend another public school, an alternative education program, center, a skill center, dropout prevention program, or another public educational program;

(c) Attend a private nonsectarian school or program including an education center. Before ordering a child to attend an approved or certified private nonsectarian school or program, the court shall: (i) Consider the public and private programs available; (ii) find that placement is in the best interest of the child; and (iii) find that the private school or program is willing to accept the child and will not charge any fees in addition to those established by contract with the student's school district. If the court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide educational services for the child. The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district. A school district shall not be required to enter into a contract that is longer than the remainder of the school year. A school district shall not be required to enter into or continue a contract if the child is no longer enrolled in the district;

(d) Be referred to a community truancy board, if available; or

(e) Submit to testing for the use of controlled substances or alcohol based on a determination that such testing is appropriate to the circumstances and behavior of the child and will facilitate the child's compliance with the mandatory attendance law.

(2) If the child fails to comply with the court order, the court may order the child to be ~~((placed in confinement for contempt, either in a juvenile detention facility operated by or under a contract with a county or in a secure facility that is a separate, secure section of a juvenile detention facility))~~ subject to detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to ((confinement)) detention such as community service. Failure by a child to comply with an order issued under this subsection shall not be subject to detention for a period greater than that permitted pursuant to a civil contempt proceeding against a child under chapter 13.32A RCW. ~~((In no case may a child in contempt be confined in a secure facility that is free standing outside a juvenile detention facility.))~~

(3) Any parent violating any of the provisions of either RCW 28A.225.010, 28A.225.015, or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. 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 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 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 child in a supervised plan for the 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.

(4) If a child continues to be truant after entering into a court-approved order with the truancy board under RCW 28A.225.035, the juvenile court shall find the child in contempt, and the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to detention such as meaningful community service. Failure by a child to comply with an order issued under this subsection may not subject a child to detention for a period greater than that permitted under a civil contempt proceeding against a child under chapter 13.32A RCW.

(5) Subsections (1), (2), and (4) of this section shall not apply to a six or seven year-old child required to attend public school under RCW 28A.225.015.

Sec. 16. RCW 74.13.033 and 2000 c . . . s 7 (section 7 of this act) 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. ~~((A child confined in a secure facility that is a separate, secure section of a juvenile detention facility under RCW 13.32A.250(3) or 28A.225.090(2) may be moved to an available bed in a juvenile detention facility. In no case may a child in contempt be confined in a secure facility that is free-standing outside a juvenile detention facility.))~~

(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;

(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 ~~((or, in the case of a child admitted by court order issued under RCW 13.32A.250(3) or 28A.225.090(2), seven 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 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 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. 17. RCW 74.13.034 and 2000 c . . . s 8 (section 8 of this act) 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 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, the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both locations shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130 (~~or, in the case of a child admitted by court order issued under RCW 13.32A.250(3) or 28A.225.090(2), seven consecutive days~~)).

(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 (~~(or, in the case of a child admitted by court order issued under RCW 13.32A.250(3) or 28A.225.090(2), seven consecutive days)~~).

(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.

Sec. 18. RCW 13.50.100 and 1999 c 390 s 3 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 contracting agency or service provider of the department of social and health services that provides counseling, psychological, psychiatric, or medical services may release to the office of the family and children's ombudsman information or records relating to services provided to a juvenile who is dependent under chapter 13.34 RCW without the consent of the parent or guardian of the juvenile, or of the juvenile if the juvenile is under the age of thirteen years, unless such release is otherwise specifically prohibited by law.

(5) 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 alleged child abuse or neglect.

(6) A juvenile or his or her parent denied access to any records following an agency determination under subsection (5) 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 (5)(a) and (b) of this section.

(7) The person making a motion under subsection (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) 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 (5) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied.

(9) No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020(12) may be disclosed to a child-placing agency, private adoption agency, or any other licensed provider.

Sec. 19. RCW 26.44.020 and 1999 c 176 s 29 are each amended to read as follows:

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

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(13) "Child protective services section" means the child protective services section of the department.

(14) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(15) "Negligent treatment or maltreatment" means an act or omission that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment.

(16) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of

the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(17) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(18) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(19) "Unfounded" means available information indicates that, more likely than not, child abuse or neglect did not occur. No unfounded allegation of child abuse or neglect may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW.

Sec. 20. RCW 74.15.030 and 1997 c 386 s 33 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. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed

to a child-placing agency, private adoption agency, or any other provider licensed under this chapter. 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 alleged 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 alleged 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.

NEW SECTION. Sec. 21. Sections 11 through 17 of this act take effect July 1, 2002.

NEW SECTION. Sec. 22. Sections 5, 9, and 10 of this act expire June 30, 2002.

Passed the House March 6, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 163

[Substitute House Bill 2410]

CREDIT CARDS—RECEIPTS

AN ACT Relating to credit cards; adding a new section to chapter 63.14 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. (1) The legislature finds that credit is an important tool for consumers in today's economy, particularly the use of credit cards. The legislature also finds that unscrupulous persons often fraudulently use the credit card accounts of others by stealing the credit card itself or by obtaining the necessary information to fraudulently charge the purchase of goods and services to another person's credit card account. The legislature intends to provide some protection for consumers from the latter by limiting the information that can appear on a credit card receipt.

(2) No person that accepts credit cards for the transaction of business shall print more than the last five digits of the credit card account number or print the credit card expiration date on a credit card receipt to the cardholder.

(3) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the credit card number is by handwriting or by an imprint or copy of the credit card.

(4) For purposes of this act, "credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(5) This section applies on July 1, 2001, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service on or after July 1, 2001, and on July 1, 2004, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service prior to July 1, 2001.

NEW SECTION. Sec. 2. A new section is added to chapter 63.14 RCW to read as follows:

(1) A retailer shall not print more than the last five digits of the credit card account number or print the credit card expiration date on a credit card receipt to the cardholder.

(2) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the credit card number is by handwriting or by an imprint or copy of the credit card.

(3) This section applies on July 1, 2001, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service on or after July 1, 2001, and on July 1, 2004, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service prior to July 1, 2001.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 4. This act takes effect July 1, 2001.

Passed the House February 10, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 164

[House Bill 2775]

DISTRICT COURT COMMISSIONERS—CASE TRANSFER

AN ACT Relating to the transfer of cases from commissioners to judges; and amending RCW 3.42.030.

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

Sec. 1. RCW 3.42.030 and 1984 c 258 s 32 are each amended to read as follows:

Any party may have a case transferred from a district court commissioner to a judge of the same district for hearing, by filing a motion for transfer as long as the motion is filed and called to the attention of the commissioner before any discretionary ruling has been made. The following are not considered discretionary rulings: (1) The arrangement of the calendar; (2) the setting of an action, motion, or proceeding for hearing or trial; (3) the arraignment of the accused; or (4) the fixing of bail. The commissioner shall forthwith transfer the case to the judge.

Passed the House February 8, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 165

[House Bill 2407]

JUDGES PRO TEMPORE

AN ACT Relating to judges pro tempore; adding a new section to chapter 2.56 RCW; and adding a new section to chapter 3.02 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 2.56 RCW to read as follows:

A judge pro tempore may be authorized under RCW 2.06.150 or 2.08.180 whenever a judge of the court of appeals or the superior court serves on a judicial commission, board, or committee established by the legislature or the chief justice of the supreme court. The judge pro tempore shall be compensated as specified in RCW 2.06.160 or 2.08.180.

NEW SECTION. **Sec. 2.** A new section is added to chapter 3.02 RCW to read as follows:

A judge pro tempore may be authorized under RCW 3.50.090 or 35.20.200 whenever a judge of the municipal court serves on a judicial commission, board, or committee established by the legislature or the chief justice of the supreme court. The judge pro tempore shall be compensated as specified in RCW 3.50.090 or 35.20.200.

Passed the House February 11, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 166

[House Bill 2375]

HIGHER EDUCATION—INFORMATION AND TECHNOLOGY LITERACY

AN ACT Relating to information and technology literacy in higher education; adding a new section 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. The legislature finds that competence in information literacy and fluency in information technology are increasingly important in the workplace as well as in day-to-day activities. The legislature finds that to prepare students to meet the challenges of the work force and society, students must be able to effectively manage and apply information from a variety of sources. In addition, the legislature finds that institutions of higher education have the opportunity to provide students with a framework and approach to use information and technology effectively.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1) Beginning in April 2000, representatives of the public baccalaureate institutions designated by the council of presidents, in consultation with representatives of the community and technical colleges and representatives of the higher education coordinating board, shall convene an interinstitutional group to begin to: (a) Develop a definition of information and technology literacy; (b) develop strategies or standards by which to measure the achievement of information and technology literacy; and (c) develop a financial assessment of the cost of implementation.

(2) The baccalaureate institutions shall provide the house of representatives and senate committees on higher education with a progress report in January 2001.

(3) By the end of January 2002, the baccalaureate institutions shall deliver to the house of representatives and senate committees on higher education a report detailing: (a) The definition of information and technology literacy; (b) strategies or standards for measurement; (c) institutionally specific plans for implementation; and (d) an evaluation of the feasibility of implementation taking into consideration cost.

(4) If the legislature determines that implementation is feasible, the public baccalaureate institutions shall pilot test strategies to assess and report on information and technology literacy during the 2002-03 academic year.

(5) By the end of January 2004, the institutions shall report to the house of representatives and senate committees on higher education the results of the 2002-03 pilot study.

(6) Implementation of assessment strategies shall begin in the academic year 2003-04.

(7) The higher education coordinating board shall report results to the house of representatives and senate committees on higher education in the 2005 legislative session.

Passed the House February 8, 2000.
Passed the Senate March 2, 2000.
Approved by the Governor March 27, 2000.
Filed in Office of Secretary of State March 27, 2000.

CHAPTER 167

[Substitute House Bill 2320]

**NONPROFIT AND MISCELLANEOUS AND MUTUAL CORPORATIONS—ELECTRONIC
COMMUNICATIONS**

AN ACT Relating to the authorization and application of electronic notice and electronic proxies to the nonprofit miscellaneous and mutual corporations act; and amending RCW 24.06.005, 24.06.095, 24.06.105, 24.06.110, 24.06.115, 24.06.190, 24.06.195, 24.06.220, 24.06.225, 24.06.240, 24.06.250, 24.06.260, 24.06.270, and 24.06.275.

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

Sec. 1. RCW 24.06.005 and 1982 c 35 s 118 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a mutual corporation or miscellaneous corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a mutual or miscellaneous corporation or other corporation organized under laws other than the laws of this state which would be subject to the provisions of this chapter if organized under the laws of this state.

(3) "Mutual corporation" means a corporation organized to accomplish one or more of its purposes on a mutual basis for members and other persons.

(4) "Miscellaneous corporation" means any corporation which is organized for a purpose or in a manner not provided for by the Washington business corporation act or by the Washington nonprofit corporation act, and which is not required to be organized under other laws of this state.

(5) "Articles of incorporation" includes the original articles of incorporation and all amendments thereto, and includes articles of merger.

(6) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(7) "Member" means one having membership rights in a corporation in accordance with provisions of its articles of incorporation or bylaws.

(8) "Stock" or "share" means the units into which the proprietary interests of a corporation are divided in a corporation organized with stock.

(9) "Stockholder" or "shareholder" means one who is a holder of record of one or more shares in a corporation organized with stock.

(10) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(11) "Insolvent" means inability of a corporation to pay debts as they become due in the usual course of its affairs.

(12) "Duplicate originals" means two copies, original or otherwise, each with original signatures, or one original with original signatures and one copy thereof.

(13) "Conforms to law" as used in connection with duties of the secretary of state in reviewing documents for filing under this chapter, means the secretary of state has determined the document complies as to form with the applicable requirements of this chapter.

(14) "Effective date" means, in connection with a document filing made by the secretary of state, the date which is shown by affixing a "filed" stamp on the documents. When a document is received for filing by the secretary of state in a form which complies with the requirements of this chapter and which would entitle the document to be filed immediately upon receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to the date on which the secretary of state first received the document in acceptable form. An applicant may request a specific effective date no more than thirty days later than the receipt date which might otherwise be applied as the effective date.

(15) "Executed by an officer of the corporation," or words of similar import, means that any document signed by such person shall be and is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the corporation or person making the document submission with the secretary of state.

(16) "An officer of the corporation" means, in connection with the execution of documents submitted for filing with the secretary of state, the president, a vice president, the secretary, or the treasurer of the corporation.

(17) "Electronic transmission" or "electronically transmitted" means any process of electronic communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of the transmitted information by the recipient. However, such an electronic transmission must either set forth or be submitted with information, including any security or validation controls used, from which it can reasonably be determined that the electronic transmission was authorized by, as applicable, the corporation or shareholder or member or on behalf of which the electronic transmission was sent.

Sec. 2. RCW 24.06.095 and 1970 ex.s. c 78 s 1 are each amended to read as follows:

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of

incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation: PROVIDED, That where the bylaws of an existing corporation prohibit voting by mail, by electronic transmission, or by proxy or attorney-in-fact, and the quorum required by its bylaws for election of directors or transaction of other business has not been obtained at a shareholders' or members' meeting, for a period which includes at least two consecutive annual meeting dates, the board of directors shall have power to amend such bylaws to thereafter authorize voting by mail, by electronic transmission, or by proxy or attorney-in-fact.

Sec. 3. RCW 24.06.105 and 1969 ex.s. c 120 s 21 are each amended to read as follows:

Written or printed notice or, if specifically permitted by the articles of incorporation or bylaws of the corporation, notice given by electronic transmission, stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail or electronic transmission, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member or shareholder entitled to vote at such meeting. If provided in the articles of incorporation, notice of regular meetings other than annual may be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to a regular meeting and at any time when requested by a member or by such other notice as may be prescribed by the bylaws. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member or shareholder at his or her address as it appears on the records of the corporation, with postage thereon prepaid. If sent by electronic transmission, the notice is deemed to be delivered when sent, addressed to the member or shareholder at his or her electronic transmission address as it appears on the records of the corporation.

Sec. 4. RCW 24.06.110 and 1969 ex.s. c 120 s 22 are each amended to read as follows:

The right of a class or classes of members or shareholders to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation. Unless so limited, enlarged or denied, each member and each outstanding share of each class shall be entitled to one vote on each matter submitted to a vote of members or shareholders. No member of a class may acquire any interest which will entitle him or her to a greater vote than any other member of the same class.

A member or shareholder may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by mail, by electronic transmission, or by proxy executed in writing by the member or shareholder or by his or her duly authorized attorney-in-fact: PROVIDED, That no proxy shall be

valid for more than eleven months from the date of its execution unless otherwise specified in the proxy.

If a member or shareholder may vote by proxy, the proxy may be given by:

(1) Executing a writing authorizing another person or persons to act for the member or shareholder as proxy. Execution may be accomplished by the member or shareholder or the member's or shareholder's authorized officer, director, employee, or agent signing the writing or causing his or her signature to be affixed to the writing by any reasonable means including, but not limited to, facsimile signature; or

(2) Authorizing another person or persons to act for the member or shareholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy, or to a proxy solicitation firm, proxy support service organization, or like agent duly authorized by the person who will be the holder of the proxy to receive the transmission. If it is determined that the electronic transmissions are valid, the inspector of election or, if there are no inspectors, any other officer or agent of the corporation making that determination on behalf of the corporation shall specify the information upon which they relied. The corporation shall require the holders of proxies received by electronic transmission to provide to the corporation copies of the electronic transmission and the corporation shall retain copies of the electronic transmission for a reasonable period of time.

The articles of incorporation may provide that whenever proposals or directors or officers are to be voted upon, such vote may be taken by mail or by electronic transmission if the name of each candidate and the text of each proposal to be so voted upon are set forth in a writing accompanying or contained in the notice of meeting. Persons voting by mail or by electronic transmission shall be deemed present for all purposes of quorum, count of votes and percentages of total voting power voting.

The articles of incorporation or the bylaws may provide that in all elections for directors every person entitled to vote shall have the right to cumulate his or her vote and to give one candidate a number of votes equal to his or her vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

Sec. 5. RCW 24.06.115 and 1969 ex.s. c 120 s 23 are each amended to read as follows:

The articles of incorporation or the bylaws may provide the number or percentage of votes which members or shareholders are entitled to cast in person, by mail, by electronic transmission, or by proxy, which shall constitute a quorum at meetings of shareholders or members. However, in no event shall a quorum be less than one-fourth of the votes which members or shareholders are entitled to cast in person, by mail, by electronic transmission, or by proxy, at a meeting considering the adoption of a proposal which is required by the provisions of this chapter to be adopted by at least two-thirds of the votes which members or

shareholders present at the meeting in person or by mail, by electronic transmission, or represented by proxy are entitled to cast. In all other matters and in the absence of any provision in the articles of incorporation or bylaws, a quorum shall consist of one-fourth of the votes which members or shareholders are entitled to cast in person, by mail, by electronic transmission, or by proxy at the meeting. On any proposal on which a class of shareholders or members is entitled to vote as a class, a quorum of the class entitled to vote as such class must also be present in person, by mail, by electronic transmission, or represented by proxy.

Sec. 6. RCW 24.06.190 and 1969 ex.s. c 120 s 38 are each amended to read as follows:

Amendments to the articles of incorporation shall be made in the following manner:

The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members and shareholders, which may be either an annual or a special meeting. Written or printed notice or, if specifically permitted by the articles of incorporation or bylaws of the corporation, notice by electronic transmission, setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member and shareholder entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members and shareholders. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members or shareholders present in person or by mail or by electronic transmission at such meeting or represented by proxy are entitled to cast: PROVIDED, That when any class of shares or members is entitled to vote thereon by class, the proposed amendment must receive at least two-thirds of the votes of the members or shareholders of each class entitled to vote thereon as a class, who are present in person, by mail, by electronic transmission, or represented by proxy at such meeting.

Any number of amendments may be submitted and voted upon at any one meeting.

Sec. 7. RCW 24.06.195 and 1982 c 35 s 130 are each amended to read as follows:

The articles of amendment shall be executed in duplicate originals by the corporation by an officer of the corporation, and shall set forth:

- (1) The name of the corporation.
- (2) Any amendment so adopted.
- (3) A statement setting forth the date of the meeting of members and shareholders at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members or shareholders of the corporation, and of each class entitled to vote thereon as a class, present at such meeting in person, by mail, by electronic transmission, or represented by proxy were entitled to cast, or a statement that such

amendment was adopted by a consent in writing signed by all members and shareholders entitled to vote with respect thereto.

Sec. 8. RCW 24.06.220 and 1969 ex.s. c 120 s 44 are each amended to read as follows:

A plan of merger or consolidation shall be adopted in the following manner:

The board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members or shareholders which may be either an annual or a special meeting. Written or printed notice or, if specifically permitted by the articles of incorporation or bylaws of the corporation, notice by electronic transmission, setting forth the proposed plan or a summary thereof shall be given to each member and shareholder within the time and in the manner provided in this chapter for the giving of notice of meetings of members and shareholders. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members and shareholders present in person or by mail or by electronic transmission at each such meeting or represented by proxy are entitled to cast: PROVIDED, That when any class of shares or members is entitled to vote thereon as a class, the proposed amendment must receive at least two-thirds of the votes of the members or shareholders of each class entitled to vote thereon as a class, who are present in person, by mail, by electronic transmission, or represented by proxy at such meeting.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

Sec. 9. RCW 24.06.225 and 1982 c 35 s 134 are each amended to read as follows:

(1) Upon approval, articles of merger or articles of consolidation shall be executed in duplicate originals by each corporation, by an officer of each corporation, and shall set forth:

(a) The plan of merger or the plan of consolidation;

(b) A statement setting forth the date of the meeting of members or shareholders at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members and shareholders of the corporation and of each class entitled to vote thereon as a class, present at such meeting in person or by mail or by electronic transmission or represented by proxy were entitled to cast, or a statement that such amendment was adopted by a consent in writing signed by all members;

(2) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he or she shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such originals the word "filed", and the effective date of the filing thereof;

- (b) File one of such originals in his or her office;
- (c) Issue a certificate of merger or a certificate of consolidation to which he or she shall affix one of such originals.

The certificate of merger or certificate of consolidation, together with the original of the articles of merger or articles of consolidation affixed thereto by the secretary of state shall be returned to the surviving or new corporation, as the case may be, or its representative, and shall be retained by the corporation.

Sec. 10. RCW 24.06.240 and 1969 ex.s. c 120 s 48 are each amended to read as follows:

A sale, lease, exchange, or other disposition of all or substantially all of the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending a sale, lease, exchange, or other disposition and directing that it be submitted to a vote at a meeting of members or shareholders which may be either an annual or a special meeting.

(2) Written or printed notice or, if specifically permitted by the articles of incorporation or bylaws of the corporation, notice by electronic transmission, stating that the purpose or one of the purposes of such meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property and assets of the corporation shall be given to each member and shareholder within the time and in the manner provided by this chapter for the giving of notice of meetings of members and shareholders.

(3) At such meeting the members may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor.

(4) Such authorization shall require at least two-thirds of the votes which members and shareholders present at such meetings in person, by mail, by electronic transmission, or represented by proxy are entitled to cast: PROVIDED, That even after such authorization by a vote of members or shareholders, the board of directors may, in its discretion, without further action or approval by members, abandon such sale, lease, exchange, or other disposition of assets, subject only to the rights of third parties under any contracts relating thereto.

Sec. 11. RCW 24.06.250 and 1969 ex.s. c 120 s 50 are each amended to read as follows:

Any member or shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of members and shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such member or shareholder shall not have voted in favor

thereof, such member or shareholder may, within ten days after the date on which the vote was taken, or if a corporation is to be merged without a vote of its members and shareholders into another corporation, any other members or shareholders may, within fifteen days after the plan of such merger shall have been mailed or sent by electronic transmission to such members and shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such member's membership or of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such member, upon surrender of his or her membership certificate, if any, or to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any member or shareholder failing to make demand within the ten day period shall be bound by the terms of the proposed corporate action. Any member or shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a member or shareholder.

No such demand shall be withdrawn unless the corporation shall consent thereto. The right of such member or shareholder to be paid the fair value of his or her shares shall cease and his or her status as a member or shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim, if:

- (1) Such demand shall be withdrawn upon consent; or
- (2) The proposed corporate action shall be abandoned or rescinded or the members or shareholders shall revoke the authority to effect such action; or
- (3) In the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger; or
- (4) No demand or petition for the determination of fair value by a court shall have been made or filed within the time provided by this section; or
- (5) A court of competent jurisdiction shall determine that such member or shareholder is not entitled to the relief provided by this section.

Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting member or shareholder who has made demand as herein provided, and shall make a written offer to each such member or shareholder to pay for such shares or membership at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation in which the member has his or her membership or the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months

prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

If within thirty days after the date on which such corporate action was effected the fair value of such shares or membership is agreed upon between any such dissenting member or shareholder and the corporation, payment therefor shall be made within ninety days after the date on which such corporate action was effected, upon surrender of the membership certificate, if any, or upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting member or shareholder shall cease to have any interest in such membership or shares.

If within such period of thirty days a dissenting member or shareholder and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from any dissenting member or shareholder given within sixty days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty days may, file a petition in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located praying that the fair value of such membership or shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any dissenting member or shareholder may do so in the name of the corporation. All dissenting members and shareholders, wherever residing, shall be made parties to the proceeding as an action against their memberships or shares quasi in rem. A copy of the petition shall be served on each dissenting member and shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting member or shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All members and shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the membership certificate, if any, or of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder or member shall cease to have any interest in such shares or membership.

The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting members and shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for membership or shares if the court shall find that the action of such members or shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the memberships or shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any member or shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the member or shareholder in the proceeding.

Within twenty days after demanding payment for his or her shares or membership, each member and shareholder demanding payment shall submit the certificate or certificates representing his or her membership or shares to the corporation for notation thereon that such demand has been made. His or her failure to do so shall, at the option of the corporation, terminate his or her rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If membership or shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear a similar notation, together with the name of the original dissenting holder of such membership or shares, and a transferee of such membership or shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting member or shareholder had after making demand for payment of the fair value thereof.

Sec. 12. RCW 24.06.260 and 1982 c 35 s 137 are each amended to read as follows:

A corporation may dissolve and wind up its affairs in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members and shareholders which may be either an annual or a special meeting.

(2) Written or printed notice or, if specifically permitted by the articles of incorporation or bylaws of the corporation, notice by electronic transmission, stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to each member and shareholder within the time and in the manner provided in this chapter for the giving of notice of meetings of members and shareholders.

(3) A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members and shareholders present in person

or by mail or by electronic transmission at such meeting or represented by proxy are entitled to cast.

Upon the adoption of such resolution by the members and shareholders, the corporation shall cease to conduct its affairs and, except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation and to the department of revenue, and shall proceed to collect its assets and to apply and distribute them as provided in RCW 24.06.265.

Sec. 13. RCW 24.06.270 and 1969 ex.s. c 120 s 54 are each amended to read as follows:

A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members or shareholders which may be either an annual or a special meeting.

(2) Written or printed notice or, if specifically permitted by the articles of incorporation or bylaws of the corporation, notice by electronic transmission, stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each member and shareholder within the time and in the manner provided in this chapter for the giving of notice of meetings of members or shareholders.

(3) A resolution to revoke voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members and shareholders present in person or by mail or by electronic transmission at such meeting or represented by proxy are entitled to cast.

Sec. 14. RCW 24.06.275 and 1993 c 356 s 17 are each amended to read as follows:

If voluntary dissolution proceedings have not been revoked, then after all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation, by an officer of the corporation; and such statement shall set forth:

(1) The name of the corporation.

(2) The date of the meeting of members or shareholders at which the resolution to dissolve was adopted, certifying that:

(a) A quorum was present at such meeting;

(b) Such resolution received at least two-thirds of the votes which members and shareholders present in person or by mail or by electronic transmission at such

meeting or represented by proxy were entitled to cast or was adopted by a consent in writing signed by all members and shareholders;

(c) All debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(d) All the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter;

(e) There are no suits pending against the corporation in any court or, if any suits are pending against it, that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered; and

(f) A copy of a revenue clearance certificate issued pursuant to chapter 82.32 RCW.

Passed the House February 8, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 168

[Substitute House Bill 2321]

BUSINESS CORPORATION ACT—ELECTRONIC COMMUNICATION

AN ACT Relating to the transmission of proxy appointments by electronic or other nonwritten means as applied to the Washington business corporation act; and amending RCW 23B.01.400, 23B.07.220, and 23B.07.240.

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

Sec. 1. RCW 23B.01.400 and 1996 c 155 s 4 are each 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) "Electronic transmission" or "electronically transmitted" means any process of electronic communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of the transmitted information by the recipient.

(9) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

~~((9))~~ (10) "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))~~ (11) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

~~((11))~~ (12) "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))~~ (13) "Governmental subdivision" includes authority, county, district, and municipality.

~~((13))~~ (14) "Includes" denotes a partial definition.

~~((14))~~ (15) "Individual" includes the estate of an incompetent or deceased individual.

~~((15))~~ (16) "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))~~ (17) "Means" denotes an exhaustive definition.

~~((17))~~ (18) "Notice" has the meaning provided in RCW 23B.01.410.

~~((18))~~ (19) "Person" includes an individual and an entity.

~~((19))~~ (20) "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))~~ (21) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

~~((21))~~ (22) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

~~((22))~~ (23) "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))~~ (24) "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))~~ (25) "Shares" means the units into which the proprietary interests in a corporation are divided.

~~((25))~~ (26) "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))~~ (27) "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))~~ (28) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~((26))~~ (29) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

~~((29))~~ (30) "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.07.220 and 1989 c 165 s 70 are each amended to read as follows:

(1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by ~~((signing an appointment form, either personally or by the shareholder's attorney-in-fact or agent))~~:

(a) Executing a writing authorizing another person or persons to act for the shareholder as proxy. Execution may be accomplished by the shareholder or the shareholder's authorized officer, director, employee, or agent signing the writing or causing his or her signature to be affixed to the writing by any reasonable means including, but not limited to, by facsimile signature; or

(b) Authorizing another person or persons to act for the shareholder as proxy, by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or like agent duly authorized by the person who will be the holder of the proxy to receive the transmission, provided that the electronic transmission must either set forth or be submitted with information, including any security or validation controls used, from which it can reasonably be determined

that the electronic transmission was authorized by the shareholder. If it is determined that the electronic transmission is valid the inspectors of election or if there are no inspectors, any officer or agent of the corporation making that determination on behalf of the corporation shall specify the information upon which they relied. The corporation shall require the holders of proxies received by electronic transmission to provide to the corporation copies of the electronic transmission and the corporation shall retain copies of the electronic transmission for a reasonable period of time after the election provided that they are retained for at least sixty days.

(3) An appointment of a proxy is effective when a signed appointment form or telegram, cablegram, recorded telephone call, voicemail, or other electronic transmission of the appointment is received by the ((secretary or other)) inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment ((form)).

(4) An appointment of a proxy is revocable by the shareholder unless the appointment indicates that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (a) A pledgee;
- (b) A person who purchased or agreed to purchase the shares;
- (c) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (d) An employee of the corporation whose employment contract requires the appointment; or
- (e) A party to a voting agreement created under RCW 23B.07.310.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the ((secretary or other)) officer or agent of the corporation authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to RCW 23B.07.240 and to any express limitation on the proxy's authority ((appearing on the face of)) stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(9) For the purposes of this section only, "sign" or "signature" includes any manual, facsimile, conformed, or electronic signature.

Sec. 3. RCW 23B.07.240 and 1989 c 165 s 72 are each amended to read as follows:

(1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer, partner, or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all the coowners.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or RCW 23B.07.220(2) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section, or RCW 23B.07.220(2) is valid unless a court of competent jurisdiction determines otherwise.

Passed the House February 8, 2000.
 Passed the Senate March 1, 2000.
 Approved by the Governor March 27, 2000.
 Filed in Office of Secretary of State March 27, 2000.

CHAPTER 169

[Engrossed House Bill 2322]

LIMITED PARTNERSHIPS—LIMITED LIABILITY COMPANIES

AN ACT Relating to partnerships and limited liability companies; amending RCW 25.15.005, 25.15.130, 25.15.270, 25.10.080, 25.10.220, 25.10.230, 25.10.440, 25.10.660, 25.05.050, and 25.05.225; and adding a new section to chapter 25.15 RCW.

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

Sec. 1. RCW 25.15.005 and 1995 c 337 s 13 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) The limited liability company laws of any state other than this state; or

(b) The laws of any foreign country that is: ~~((A){(i)})~~ (i) An unincorporated association, ~~((B){(ii)})~~ (ii) formed under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and ~~((C){(iii)})~~ (iii) not required, in order to transact business or conduct affairs in this state, to be registered or 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 having one or more members that is organized and existing under this chapter.

(5) "Limited liability company agreement" means any written agreement of the members, or any written statement of the sole member, as to the affairs of a limited liability company and the conduct of its business which is binding upon ~~((a)-(f))~~ the member or 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 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. 2. RCW 25.15.130 and 1995 c 337 s 17 are each amended to read as follows:

(1) A person ceases to be a member of a limited liability company, and the person or its successor in interest attains the status of an assignee as set forth in RCW 25.15.250(2), 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 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) A member may withdraw from a limited liability company at 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.

NEW SECTION. Sec. 3. A new section is added to chapter 25.15 RCW under the subchapter heading "Article IV" to read as follows:

In the event of the death, resignation, or removal of the sole remaining manager, or if one of the events described in RCW 25.15.130(1) (d) through (i) occurs with regard to the sole remaining manager, and unless the limited liability company agreement provides otherwise, the limited liability company shall become member-managed unless one or more managers are appointed by majority vote of the members within ninety days after the occurrence of such an event.

Sec. 4. RCW 25.15.270 and 1997 c 21 s 1 are each amended to read as follows:

A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) The dissolution date, if any, specified in ~~((a limited liability company agreement. If a date is not specified in the agreement or the agreement does not specify perpetual existence, then the dissolution date is thirty years after the date of formation))~~ the certificate of formation. If a dissolution date is not specified in the certificate of formation, the limited liability company's existence will continue until the first to occur of the events described in subsections (2) through (6) of this section. If a dissolution date is specified in the ((agreement, it is renewable by consent)) certificate of formation, the certificate of formation may be amended and the existence of the limited liability company may be extended by vote of all the members;

(2) The happening of events specified in a limited liability company agreement;

(3) The written consent of all members;

(4) Unless the limited liability company agreement provides otherwise, ninety days following an event of dissociation of ((a)) the last remaining member, unless ((the business of the limited liability company is continued either by the consent of all the remaining members within ninety days following the occurrence of any such event or pursuant to a right to continue stated in the limited liability company agreement)) those having the rights of assignees in the limited liability company under RCW 25.15.130(1) have, by the ninetieth day, voted to admit one or more members, voting as though they were members, and in the manner set forth in RCW 25.15.120(1);

(5) The entry of a decree of judicial dissolution under RCW 25.15.275; or

(6) The expiration of two years after the effective date of dissolution under RCW 25.15.285 without the reinstatement of the limited liability company.

Sec. 5. RCW 25.10.080 and 1987 c 55 s 5 are each amended to read as follows:

(1) In order to form a limited partnership a certificate of limited partnership must be executed and duplicate originals filed in the office of the secretary of state. The certificate shall set forth:

(a) The name of the limited partnership;

(b) The address of the office for records and the name and address of the agent for service of process appointed pursuant to RCW 25.10.040;

(c) The name and the geographical and mailing addresses of each general partner;

(d) If the limited partnership is to have a specific date of dissolution, the latest date upon which the limited partnership is to dissolve; and

(e) Any other matters the general partners determine to include therein.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

Sec. 6. RCW 25.10.220 and 1981 e 51 s 22 are each amended to read as follows:

Unless otherwise provided in the partnership agreement, after the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only with the specific written consent of each general partner, if any, and limited partners representing at least two-thirds of the agreed value, as stated in the records of the partnership required to be kept under RCW 25.10.050, of contributions made, or required to be made, by all limited partners.

Sec. 7. RCW 25.10.230 and 1987 c 55 s 18 are each amended to read as follows:

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership, and the person or its successor in interest attains the status of an assignee as set forth in RCW 25.10.400(1), upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in RCW 25.10.320;

(2) The general partner ceases to be a member of the limited partnership as provided in RCW 25.10.400;

(3) The general partner is removed as a general partner in accordance with the partnership agreement;

(4) Unless otherwise provided in writing in the partnership agreement, the general partner:

(a) Makes an assignment for the benefit of creditors;

(b) Files a voluntary petition in bankruptcy;

(c) Is adjudicated a bankrupt or insolvent;

(d) 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;

(e) 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 this nature; or

(f) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his or her properties;

(5) Unless otherwise provided in the certificate of limited partnership, ninety days after the commencement of any proceeding against the general partner 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 sixty days after the appointment without the

general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner of all or any substantial part of his or her properties, the appointment is not vacated or stayed, or within sixty days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person:

(a) His or her death; or

(b) The entry by a court of competent jurisdiction adjudicating the general partner incompetent to manage his or her person or estate;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(10) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Sec. 8. RCW 25.10.440 and 1996 c 76 s 3 are each amended to read as follows:

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) ~~((At))~~ The dissolution date, if any, specified in the certificate of limited partnership ((as amended from time to time, or if no date is specified, at a date which is thirty years after the effective date of filing the original certificate of limited partnership)). If a dissolution date is not specified in the certificate of limited partnership, the limited partnership's existence shall continue until the first to occur of the events described in subsections (2) through (6) of this section. If a dissolution date is specified in the certificate of limited partnership and unless the limited partnership agreement provides otherwise, the certificate of limited partnership may be amended and the existence of the limited partnership may be extended by the vote of all the partners;

(2) Upon the happening of events specified in the partnership agreement;

(3) Written consent of all partners;

(4) ~~((An event of withdrawal of a general partner unless at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired))~~ Unless the limited partnership agreement provides otherwise, ninety days following:

(a) The withdrawal of, or the assignment of the interest of, the last remaining limited partner if by the ninetieth day a majority of the number of general partners have failed to vote to admit one or more limited partners; or

(b) An event of withdrawal with respect to the last remaining general partner if by the ninetieth day the limited partners have failed to vote to admit one or more general partners. For the purposes of this subsection (4)(b) and unless the limited partnership agreement provides otherwise, the vote of the limited partners shall be the vote of limited partners representing two-thirds of the total agreed value, as stated in the records of the partnership required to be kept under RCW 25.10.050, of contributions made, or required to be made, by all limited partners;

(5) Entry of a decree of judicial dissolution under RCW 25.10.450; or

(6) Administrative dissolution under RCW 25.10.455.

Sec. 9. RCW 25.10.660 and 1981 c 51 s 66 are each amended to read as follows:

In any case not provided for in this chapter, the provisions of the Washington revised uniform partnership act, or its successor statute, govern.

Sec. 10. RCW 25.05.050 and 1998 c 103 s 201 are each amended to read as follows:

(1) A partnership is an entity distinct from its partners.

(2) A limited liability partnership continues to be the same entity that existed before the filing of ~~((a statement of qualification under RCW 25.05.420))~~ an application under RCW 25.05.500(2).

Sec. 11. RCW 25.05.225 and 1998 c 103 s 601 are each amended to read as follows:

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(a) It is unlawful to carry on the partnership business with that partner;

(b) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest which, in either case, has not been foreclosed;

(c) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed articles of dissolution, it has been administratively or judicially dissolved, or its right to conduct business has been suspended by the jurisdiction of its incorporation, and there is no revocation of the articles of dissolution, no reinstatement following its administrative dissolution, or

reinstatement of its right to conduct business by the jurisdiction of its incorporation, as applicable; or

(d) A partnership or limited liability company that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(a) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under RCW 25.05.165; or

(c) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner's:

(a) Becoming a debtor in bankruptcy;

(b) Executing an assignment for the benefit of creditors;

(c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(d) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(a) The partner's death;

(b) The appointment of a guardian or general conservator for the partner; or

(c) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, limited liability company, trust, or estate.

Passed the House January 31, 2000.
Passed the Senate February 29, 2000.
Approved by the Governor March 27, 2000.
Filed in Office of Secretary of State March 27, 2000.

CHAPTER 170

[Engrossed House Bill 2713]

MANDATORY ARBITRATION

AN ACT Relating to mandatory arbitration; and amending RCW 36.18.016.

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

Sec. 1. RCW 36.18.016 and 1999 c 397 s 8 are each amended 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)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty 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 one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of fifty dollars for a jury of six, or one hundred dollars for a jury of twelve 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) For filing a warrant for overpayment of state retirement systems benefits under chapter 41.50 RCW, a fee of five dollars shall be charged pursuant to RCW 41.50.136.

(19) 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.

(20) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(21) 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.

(22) Investment service charge and earnings under RCW 36.48.090 must be charged.

(23) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(24) For filing a request for mandatory arbitration, a fee may be assessed against the party filing a statement of arbitrability not to exceed one hundred twenty dollars as established by authority of local ordinance and approved by a vote of the people if it is determined by a court of competent jurisdiction that such a vote is required by chapter 1, Laws of 2000 (Initiative Measure No. 695). This charge shall be used solely to offset the cost of the mandatory arbitration program.

(25) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

Passed the House February 15, 2000.
 Passed the Senate March 1, 2000.
 Approved by the Governor March 27, 2000.
 Filed in Office of Secretary of State March 27, 2000.

CHAPTER 171

[House Bill 2400]

BUSINESS AND PROFESSIONS—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to various business and professions laws; amending RCW 18.04.295, 18.04.105, 18.20.010, 18.22.040, 18.25.0151, 18.25.0196, 18.25.0197, 18.25.190, 18.27.270, 18.39.010, 18.39.510, 18.44.241, 18.44.261, 18.44.271, 18.44.281, 18.44.291, 18.44.450, 18.48.060, 18.53.040, 18.57.174, 18.57A.060, 18.64.430, 18.71.017, 18.74.012, 18.88A.140, 18.104.020, 18.106.180, 18.106.250, 18.130.172, 18.135.060, 18.145.010, 18.155.010, 18.155.020, 18.155.030, 18.160.030, 18.160.040, 18.165.020, 18.165.130, 18.170.110, 18.185.010, 18.205.030, 18.205.100, 19.02.110, 19.02.800, 19.27A.050, 19.28.015, 19.28.370, 19.30.200, 19.32.150, 19.34.020, 19.34.250, 19.34.901, 19.36.100, 19.40.071, 19.56.010, 19.60.085, 19.68.040, 19.72.040, 19.80.065, 19.85.030, 19.94.258, 19.94.2584, 19.94.310, 19.94.390, 19.94.505, 19.98.020, 19.98.110, 19.105.330, 19.105.470, 19.116.030, 19.116.050, 19.120.080, 19.138.021, 19.146.260, 19.166.090, and 19.174.020; and repealing RCW 18.08.150, 18.08.190, 18.08.220, 18.25.050, 18.32.326, 18.45.010, 18.45.020, 18.45.440, 18.45.450, 18.45.470, and 18.90.010.

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

Sec. I. RCW 18.04.295 and 1992 c 103 s 11 are each amended to read as follows:

The board of accountancy shall have the power to revoke, suspend, ~~((for))~~ or refuse to renew a certificate or license, and may impose a fine in an amount not to exceed one thousand dollars plus the board's investigative and legal costs in bringing charges against a certified public accountant, or impose conditions precedent to renewal of the certificate or license of any certified public accountant for any of the following causes:

- (1) Fraud or deceit in obtaining a certificate as a certified public accountant, or in obtaining a license;
- (2) Dishonesty, fraud, or negligence while representing oneself as a CPA;
- (3) A violation of any provision of this chapter;
- (4) A violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;
- (5) Conviction of a crime or an act constituting a crime under:
 - (a) The laws of this state;
 - (b) The laws of another state, and which, if committed within this state, would have constituted a crime under the laws of this state; or
 - (c) Federal law;
- (6) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state;
- (7) Suspension or revocation of the right to practice matters relating to public accounting before any state or federal agency;

For purposes of subsections (6) and (7) of this section, a certified copy of such revocation, suspension, or refusal to renew shall be prima facie evidence;

(8) Failure to maintain compliance with the requirements for issuance, renewal, or reinstatement of the certificate or license, or to report changes to the board;

(9) Failure to cooperate with the board by:

(a) Failure to furnish any papers or documents requested or ordered by the board;

(b) Failure to furnish in writing a full and complete explanation covering the matter contained in the complaint filed with the board or the inquiry of the board;

(c) Failure to respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 2. RCW 18.04.105 and 1999 c 378 s 2 are each amended to read as follows:

(1) The certificate of "certified public accountant" shall be granted by the board to any person:

(a) Who is of good character. Good character, for purposes of this section, means lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good character of the applicant and the professional responsibilities of a certified public accountant and if the finding by the board of lack of good character is supported by a preponderance of evidence. When an applicant is found to be unqualified for a certificate because of a lack of good character, the board shall furnish the applicant a statement containing the findings of the board and a notice of the applicant's right of appeal;

(b) Who has met the educational standards established by rule as the board determines to be appropriate;

The board may, in its discretion, waive the educational requirements for any person if it is satisfied through review of documentation of successful completion of an equivalency examination that the person's educational qualifications are an acceptable substitute for the requirements of (b) of this subsection; and

(c) Who has passed a written examination.

(2) The examination described in subsection (1)(c) of this section shall be in writing, shall be held twice a year, and shall test the applicant's knowledge of the subjects of accounting and auditing, and other related fields the board may specify by rule. The time for holding the examination is fixed by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and taking the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate. The board shall to the extent possible see to it that the grading of the examination, and the passing grades, are uniform with those applicable to all other states. The board

may make use of all or a part of the uniform certified public accountant examination and advisory grading service of the American Institute of Certified Public Accountants and may contract with third parties to perform administrative services with respect to the examination as the board deems appropriate to assist it in performing its duties under this chapter.

(3) An applicant is required to pass all sections of the examination provided for in subsection (2) of this section in order to qualify for a certificate. If at a given sitting of the examination an applicant passes two or more but not all sections, then the applicant shall be given credit for those sections that he or she passed, and need not take those sections again: PROVIDED, That:

(a) The applicant took all sections of the examination at that sitting;

(b) The applicant attained a minimum grade of fifty on each section not passed at that sitting;

(c) The applicant passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;

(d) At each subsequent sitting at which the applicant seeks to pass additional sections, the applicant takes all sections not yet passed; and

(e) In order to receive credit for passing additional sections in a subsequent sitting, the applicant attains a minimum grade of fifty on sections written but not passed on the sitting.

(4) The board may waive or defer any of the requirements of subsection (3) of this section for candidates transferring conditional CPA exam credits from other states or for qualifying reciprocity certification applicants who met the conditioning requirements of the state or foreign jurisdiction issuing their original certificate.

(5) The board shall charge each applicant an examination fee for the initial examination under subsection (1) of this section, or for reexamination under subsection (3) of this section for each subject in which the applicant is reexamined. The applicable fee shall be paid by the person at the time he or she applies for examination, reexamination, or evaluation of educational qualifications. Fees for examination, reexamination, or evaluation of educational qualifications shall be determined by the board under chapter 18.04 RCW. There is established in the state treasury an account to be known as the certified public accountants' account. All fees received from candidates to take any or all sections of the certified public accountant examination shall be used only for costs related to the examination.

(6) Persons who on June 30, 1986, held certified public accountant certificates previously issued under the laws of this state shall not be required to obtain additional certificates under this chapter, but shall otherwise be subject to this chapter. Certificates previously issued shall, for all purposes, be considered certificates issued under this chapter and subject to its provisions.

(7) A certificate of a "certified public accountant" under this chapter is issued every three years with renewal subject to requirements of continuing professional education and payment of fees, prescribed by the board.

(8) The board shall adopt rules providing for continuing professional education for certified public accountants. The rules shall:

(a) Provide that a certified public accountant shall verify to the board that he or she has completed at least an accumulation of one hundred twenty hours of continuing professional education during the last three-year period to maintain the certificate;

(b) Establish continuing professional education requirements;

(c) Establish when newly certificated public accountants shall verify that they have completed the required continuing professional education;

(d) Provide that failure to furnish verification of the completion of the continuing professional education requirement shall make the certificate invalid and subject to reinstatement, unless the board determines that the failure was due to retirement, reasonable cause, or excusable neglect; and

(e) Provide for transition from existing to new continuing professional education requirements.

(9) The board may adopt by rule new CPE standards that differ from those in subsection (8) of this section or RCW 18.04.215 if: (a) The new standards are consistent with the continuing professional education standards of other states so as to provide to the greatest extent possible, consistent national standards; and (b) the new standards are at least as strict as the standards set forth in subsection (8) of this section or RCW 18.04.215.

Sec. 3. RCW 18.20.010 and 1985 c 297 s 1 are each amended to read as follows:

The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of boarding homes, which, in the light of advancing knowledge, will promote safe and adequate care of the individuals therein. It is further the intent of the legislature that boarding homes be available to meet the needs of those for whom they care by recognizing the capabilities of individuals to direct their self-medication or to use supervised self-medication techniques when ordered and approved by a physician licensed under chapter 18.57 or 18.71 RCW or a (~~podiatrist~~) podiatric physician and surgeon licensed under chapter 18.22 RCW.

EXPLANATORY NOTE

The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Sec. 4. RCW 18.22.040 and 1993 c 29 s 2 are each amended to read as follows:

Before any person may take an examination for the issuance of a podiatric physician and surgeon license, the applicant shall submit a completed application

and a fee determined by the secretary as provided in RCW 43.70.250. The applicant shall also furnish the secretary and the board with satisfactory proof that:

(1) The applicant has not engaged in unprofessional conduct as defined in chapter 18.130 RCW and is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment;

(2) The applicant has satisfactorily completed a course in an approved school of podiatric medicine and surgery;

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

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 5. RCW 18.25.0151 and 1994 sp.s. c 9 s 104 are each amended to read as follows:

The Washington state chiropractic quality assurance commission is established, consisting of fourteen members appointed by the governor to four-year terms, and including eleven practicing chiropractors and three public members. No member may serve more than two consecutive full terms. In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the governor appoint members of the previous boards and committees regulating this profession to the commission. Members of the commission hold office until their successors are appointed. The governor may appoint the members of the initial ~~((commissions [commission]))~~ commission to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. The governor may consider persons who are recommended for appointment by chiropractic associations of this state.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 6. RCW 18.25.0196 and 1974 ex.s. c 97 s 5 are each amended to read as follows:

Notwithstanding any other provision of law, for the purpose of RCW ~~((8.25.120 through 18.25.150 and 18.25.170))~~ 18.25.0192 through 18.25.0195 and 18.25.0197 it is immaterial whether the cost of any policy, plan, agreement, or contract be deemed additional compensation for services, or otherwise.

EXPLANATORY NOTE

RCW 18.25.120 through 18.25.150 and 18.25.170 were recodified as RCW 18.25.0192 through 18.25.0195 and 18.25.0197 by 1994 sp.s. c 9 s 120, effective July 1, 1994.

Sec. 7. RCW 18.25.0197 and 1974 ex.s. c 97 s 6 are each amended to read as follows:

RCW (~~18.25.120 through 18.25.160~~) 18.25.0192 through 18.25.0196 shall apply to all agreements, renewals, or contracts issued on or after July 24, 1974.

EXPLANATORY NOTE

RCW 18.25.120 through 18.25.160 were recodified as RCW 18.25.0192 through 18.25.0196 by 1994 sp.s. c 9 s 120, effective July 1, 1994.

Sec. 8. RCW 18.25.190 and 1994 sp.s. c 9 s 118 are each amended to read as follows:

Nothing in this chapter shall be construed to prohibit:

(1) The temporary practice in this state of chiropractic by any chiropractor licensed by another state, territory, or country in which he or she resides. However, the chiropractor shall not establish a practice open to the general public and shall not engage in temporary practice under this section for a period longer than thirty days. The chiropractor shall register his or her intention to engage in the temporary practice of chiropractic in this state with the commission before engaging in the practice of chiropractic, and shall agree to be bound by such conditions as may be prescribed by rule by the commission.

(2) The practice of chiropractic, except the administration of a chiropractic adjustment, by a person who is a regular senior student in an accredited school of chiropractic approved by the commission if the practice is part of a regular course of instruction offered by the school and the student is under the direct supervision and control of a chiropractor duly licensed pursuant to this chapter and approved by the commission.

(3) The practice of chiropractic by a person serving a period of postgraduate chiropractic training in a program of clinical chiropractic training sponsored by a school of chiropractic accredited in this state if the practice is part of his or her duties as a clinical postgraduate trainee and the trainee is under the direct supervision and control of a chiropractor duly licensed pursuant to this chapter and approved by the commission.

(4) The practice of chiropractic by a person who is eligible and has applied to take the next available examination for licensing offered by the commission, except that the unlicensed chiropractor must provide all services under the direct control and supervision of a licensed chiropractor approved by the commission. The unlicensed chiropractor may continue to practice as provided by this subsection until the results of the next available examination are published, but in no case for a period longer than six months. The commission shall adopt rules necessary to effectuate the intent of this subsection.

Any provision of chiropractic services by any individual under subsection (1), (2), (3), or (4) of this section shall be subject to the jurisdiction of the commission as provided in chapter ~~(s-18.26 and)~~ 18.130 RCW.

EXPLANATORY NOTE

Chapter 18.26 RCW was repealed by 1994 sp.s. c 9 s 121, effective July 1, 1994.

Sec. 9. RCW 18.27.270 and 1997 c 314 s 16 are each amended to read as follows:

(1) A contractor who is issued a notice of infraction shall respond within twenty days of the date of issuance of the notice of infraction.

(2) If the contractor named in the notice of infraction does not elect to contest the notice of infraction, then the contractor shall pay to the department, by check or money order, the amount of the penalty prescribed for the infraction. When a response which does not contest the notice of infraction is received by the department with the appropriate penalty, the department shall make the appropriate entry in its records.

(3) If the contractor named in the notice of infraction elects to contest the notice of infraction, the contractor shall respond by filing an answer of protest with the department specifying the grounds of protest.

(4) If any contractor issued a notice of infraction fails to respond within the prescribed response period, the contractor shall be guilty of a misdemeanor and prosecuted in the county where the infraction occurred.

(5) After final determination by an administrative law judge that an infraction has been committed, a contractor who fails to pay a monetary penalty within thirty days, that is not waived (~~(, reduced, or suspended)~~) pursuant to RCW 18.27.340(2), and who fails to file an appeal pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(6) A contractor who fails to pay a monetary penalty within thirty days after exhausting appellate remedies pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(7) If a contractor who is issued a notice of infraction is a contractor who has failed to register as a contractor under this chapter, the contractor is subject to a monetary penalty per infraction as provided in the schedule of penalties established by the department, and each day the person works without becoming registered is a separate infraction.

EXPLANATORY NOTE

RCW 18.27.340(2) was amended by 1997 c 314 s 17, removing the reference to a reduced or suspended monetary penalty.

Sec. 10. RCW 18.39.010 and 1989 c 390 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) "Funeral director" means a person engaged in the profession or business of conducting funerals and supervising or directing the burial and disposal of dead human bodies.

(2) "Embalmer" means a person engaged in the profession or business of disinfecting, preserving or preparing for disposal or transportation of dead human bodies.

(3) "Two-year college course" means the completion of sixty semester hours or ninety quarter hours of college credit, including the satisfactory completion of certain college courses, as set forth in this chapter.

(4) "Funeral establishment" means a place of business licensed in accordance with RCW 18.39.145, conducted at a specific street address or location, and devoted to the care and preparation for burial or disposal of dead human bodies and includes all areas of such business premises and all tools, instruments, and supplies used in preparation and embalming of dead human bodies for burial or disposal.

(5) "Director" means the director of licensing.

(6) "Board" means the state board of funeral directors and embalmers created pursuant to RCW 18.39.173.

(7) "Prearrangement funeral service contract" means any contract under which, for a specified consideration, a funeral establishment promises, upon the death of the person named or implied in the contract, to furnish funeral merchandise or services.

(8) "Funeral merchandise or services" means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

(9) "Qualified public depository" means a public depository defined by RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, or a federal credit union or a federal savings and loan association organized, operated, and governed by any act of congress, in which prearrangement funeral service contract funds are deposited by any funeral establishment.

Words used in this chapter importing the singular may be applied to the plural of the person or thing, words importing the plural may be applied to the singular, and words importing the masculine gender may be applied to the female.

EXPLANATORY NOTE

The term "depository" was redefined as "public depository" by 1996 c 256 s 1.

Sec. 11. RCW 18.39.510 and 1994 c 17 s 13 are each amended to read as follows:

(1) Prior to serving a statement of charges, the board may furnish a statement of allegations to the licensee, registrant, endorsement or permit holder, or applicant along with a detailed summary of the evidence relied upon to establish the allegations and a proposed stipulation for informal resolution of the allegations. These documents shall be exempt from public disclosure until such time as the allegations are resolved either by stipulation or otherwise.

(2) The board and the licensee, registrant, endorsement or permit holder, or applicant may stipulate that the allegations may be disposed of informally in

accordance with this subsection. The stipulation shall contain a statement of the facts leading to the filing of the complaint; the act or acts of unprofessional conduct alleged to have been committed or the alleged basis for determining that the licensee, registrant, endorsement or permit holder, or applicant is unable to practice with reasonable skill and safety; a statement that the stipulation is not to be construed as a finding of either unprofessional conduct or inability to practice; an acknowledgement that a finding of unprofessional conduct or inability to practice, if proven, constitutes grounds for discipline under this chapter; an agreement on the part of the licensee, registrant, endorsement or permit holder, or applicant that the sanctions set forth in this chapter, except for revocation, suspension, censure, or reprimand of a licensee, registrant, endorsement ~~((of {or}))~~ or permit holder, or applicant may be imposed as part of the stipulation, except that no fine may be imposed but the licensee, registrant, endorsement or permit holder, or applicant may agree to reimburse the board the costs of investigation and processing the complaint up to an amount not exceeding one thousand dollars per allegation; and an agreement on the part of the board to forego further disciplinary proceedings concerning the allegations. A stipulation entered into pursuant to this subsection shall not be considered formal disciplinary action.

(3) If the licensee, registrant, endorsement or permit holder, or applicant declines to agree to disposition of the charges by means of a stipulation pursuant to subsection (2) of this section, the board may proceed to formal disciplinary action pursuant to this chapter.

(4) Upon execution of a stipulation under subsection (2) of this section by both the licensee, registrant, endorsement or permit holder, or applicant and the board, the complaint is deemed disposed of and shall become subject to public disclosure on the same basis and to the same extent as other records of the board. Should the licensee, registrant, endorsement or permit ~~((holder {holder}))~~ holder, or applicant fail to pay any agreed reimbursement within thirty days of the date specified in the stipulation for payment, the board may seek collection of the amount agreed to be paid in the same manner as enforcement of a fine under this chapter.

EXPLANATORY NOTE

Corrects manifest drafting errors.

Sec. 12. RCW 18.44.241 and 1987 c 471 s 5 are each amended to read as follows:

The following criteria will be considered by the director when deciding whether to grant a licensed escrow agent a waiver from the errors and omissions policy requirement under RCW ~~((18.44.050))~~ 18.44.201:

(1) Whether the director has determined pursuant to RCW ~~((18.44.360))~~ 18.44.221 that an errors and omissions policy is not reasonably available to a substantial number of licensed escrow agents;

(2) Whether purchasing an errors and omissions policy would be cost-prohibitive for the licensed escrow agent requesting the exemption;

(3) Whether a licensed escrow agent has wilfully violated the provisions of chapter 18.44 RCW, which violation thereby resulted in the termination of the agent's certificate, or engaged in any other conduct resulting in the termination of the escrow certificate;

(4) Whether a licensed escrow agent has paid claims directly or through an errors and omissions carrier, exclusive of costs and attorney fees, in excess of ten thousand dollars in the calendar year preceding the year for which the waiver is requested;

(5) Whether a licensed escrow agent has paid claims directly or through an errors or omissions insurance carrier, exclusive of costs and attorney fees, totaling in excess of twenty thousand dollars in the three calendar years preceding the calendar year for which the exemption is requested; and

(6) Whether the licensed escrow agent has been convicted of a crime involving honesty or moral turpitude.

These criteria are not intended to be a wholly inclusive list of factors to be applied by the director when considering the merits of a licensed escrow agent's request for a waiver of the required errors and omissions policy.

EXPLANATORY NOTE

RCW 18.44.050 and 18.44.360 were recodified as RCW 18.44.201 and 18.44.221 pursuant to 1999 c 30 s 37.

Sec. 13. RCW 18.44.261 and 1987 c 471 s 6 are each amended to read as follows:

The director shall, within thirty days following submission of a written petition for waiver of the insurance requirements found in RCW ~~((18.44.050))~~ 18.44.201, issue a written determination granting or rejecting an applicant's request for waiver.

EXPLANATORY NOTE

RCW 18.44.050 was recodified as RCW 18.44.201 pursuant to 1999 c 30 s 37.

Sec. 14. RCW 18.44.271 and 1987 c 471 s 7 are each amended to read as follows:

Upon granting a waiver of insurance requirements found in RCW ~~((18.44.050))~~ 18.44.201, the director shall issue a certificate of waiver, which certificate shall be mailed to the escrow agent who requested the waiver.

EXPLANATORY NOTE

RCW 18.44.050 was recodified as RCW 18.44.201 pursuant to 1999 c 30 s 37.

Sec. 15. RCW 18.44.281 and 1987 c 471 s 8 are each amended to read as follows:

Upon determining that a licensed escrow agent is to be denied a waiver of the errors and omissions policy requirements of RCW ~~((18.44.050))~~ 18.44.201, the director shall within thirty days of the denial of an escrow agent's request for same,

provide to the escrow agent a written explanation of the reasons for the director's decision to deny the requested waiver.

EXPLANATORY NOTE

RCW 18.44.050 was recodified as RCW 18.44.201 pursuant to 1999 c 30 s 37.

Sec. 16. RCW 18.44.291 and 1987 c 471 s 9 are each amended to read as follows:

Nothing in RCW (~~18.44.050 and 18.44.375 through 18.44.395~~) 18.44.201, 18.44.241 through 18.44.261, 18.44.271, and 18.44.281 shall be construed as prohibiting a person applying for an escrow license from applying for a certificate of waiver of the errors and omissions policy requirement when seeking an escrow license.

EXPLANATORY NOTE

RCW 18.44.050 and 18.44.375 through 18.44.395 were recodified as RCW 18.44.201, 18.44.241 through 18.44.261, 18.44.271, and 18.44.281, respectively, pursuant to 1999 c 30 s 37.

Sec. 17. RCW 18.44.450 and 1999 c 30 s 33 are each amended to read as follows:

(1) "Real property lender" as used in this section means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, or partnership that makes loans secured by real property located in this state.

(2) No real property lender, escrow agent, or officer or employee of any escrow agent or real property lender may give or agree to pay or give any money, service, or object of value to any real estate agent or broker, to any real property lender, or to any officer or employee of any agent, broker, or lender in return for the referral of any real estate escrow services. Nothing in this subsection prohibits the payment of fees or other compensation permitted under the federal Real Estate Settlement Procedures Act as amended (12 U.S.C. sections 2601 through 2617).

(3) The legislature finds that the practices governed by this subsection are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this section is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and ~~((fan))~~ an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 18. RCW 18.48.060 and 1998 c 272 s 8 are each amended to read as follows:

(1) The secretary, in consultation with the secretary of social and health services, shall appoint an advisory committee on matters relating to the regulation,

administrative rules, enforcement process, staffing, and training requirements of adult family homes. The advisory committee shall be composed of six members, of which two members shall be resident advocates, three members shall represent adult family home providers, and one member shall represent the public and serve as chair. The members shall generally represent the interests of aging residents, residents with dementia, residents with mental illness, and residents with developmental disabilities~~((f-))~~, respectively. Members representing adult family home providers must have at least two years' experience as licensees. The membership must generally reflect urban and rural areas and western and eastern parts of the state. A member may not serve more than two consecutive terms.

(2) The secretary may remove a member of the advisory committee for cause as specified by rule adopted by the department. If there is a vacancy, the secretary shall appoint a member to serve for the remainder of the unexpired term.

(3) The advisory committee shall meet at the times and places designated by the secretary and shall hold meetings during the year as necessary to provide advice to the secretary on matters relating to the regulation of adult family homes. A majority of the members may request a meeting of the committee for any express purpose directly related to the regulation of adult family homes. A majority of members currently serving shall constitute a quorum.

(4) Establishment of the advisory committee shall not prohibit the department of health from utilizing other advisory activities that the department of health deems necessary for program development.

(5) Each member of the advisory committee shall serve without compensation but may be reimbursed for travel expenses as authorized in RCW 43.03.060.

(6) The secretary, members of the advisory committee, or individuals acting on their behalf are immune from civil liability for official acts performed in the course of their duties.

EXPLANATORY NOTE

Corrects a manifest error in punctuation.

Sec. 19. RCW 18.53.040 and 1975 1st ex.s. c 69 s 15 are each amended to read as follows:

Nothing in this chapter shall be construed to pertain in any manner to the practice of any regularly qualified oculist or physician, who is regularly licensed to practice medicine in the state of Washington, or to any person who is regularly licensed to practice as a dispensing optician in the state of Washington, nor to any person who in the regular course of trade, sells or offers for sale, spectacles or eyeglasses as regular merchandise without pretense of adapting them to the eyes of the purchaser, and not in evasion of this chapter: PROVIDED, That any such regularly qualified oculist or physician or other person shall be subject to the provisions of ~~((subdivisions (10) through (15) of))~~ RCW 18.53.140 (9) through (14), in connection with the performance of any function coming within the definition of the practice of optometry as defined in this chapter: PROVIDED

FURTHER, HOWEVER, That in no way shall this section be construed to permit a dispensing optician to practice optometry as defined in this 1975 amendatory act.

EXPLANATORY NOTE

RCW 18.53.140 was amended by 1986 c 259 s 82, changing subsections (10) through (15) to subsections (9) through (14), respectively.

Sec. 20. RCW 18.57.174 and 1986 c 300 s 9 are each amended to read as follows:

~~((1))~~ (1) A health care professional licensed under chapter 18.57 RCW shall report to the board when he or she has personal knowledge that a practicing osteopathic physician has either committed an act or acts which may constitute statutorily defined unprofessional conduct or that a practicing osteopathic physician may be unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any impairing mental or physical conditions.

(2) Reporting under this section is not required by:

(a) An appropriately appointed peer review committee member of a licensed hospital or by an appropriately designated professional review committee member of an osteopathic medical society during the investigative phase of their respective operations if these investigations are completed in a timely manner; or

(b) A treating licensed health care professional of an osteopathic physician currently involved in a treatment program as long as the physician patient actively participates in the treatment program and the physician patient's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(3) The board may impose disciplinary sanctions, including license suspension or revocation, on any health care professional subject to the jurisdiction of the board who has failed to comply with this section.

EXPLANATORY NOTE

Corrects a manifest clerical error.

Sec. 21. RCW 18.57A.060 and 1973 c 77 s 20 are each amended to read as follows:

No health care services may be performed under this chapter in any of the following areas:

(1) The measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics.

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) Nothing in this section shall preclude the performance of routine visual screening.

(5) The practice of dentistry or dental hygiene as defined in chapter 18.32 and 18.29 RCW respectively. The exemptions set forth in RCW 18.32.030, paragraphs (1) and (8), shall not apply to a physician's assistant.

(6) The practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine.

(7) The practice of (~~podiatry~~) podiatric medicine and surgery as defined in chapter 18.22 RCW.

EXPLANATORY NOTE

The term "podiatry" was changed to "podiatric medicine and surgery" by 1990 c 147.

Sec. 22. RCW 18.64.430 and 1993 c 492 s 267 are each amended to read as follows:

The registered or licensed pharmacist (~~(of {under})~~) under this chapter shall establish and maintain a procedure for disclosing to physicians and other health care providers with prescriptive authority information detailed by prescriber, of the cost and dispensation of all prescriptive medications prescribed by him or her for his or her patients on request. These charges should be made available on at least a quarterly basis for all requested patients and should include medication, dosage, number dispensed, and the cost of the prescription. Pharmacies may provide this information in a summary form for each prescribing physician for all patients rather than as individually itemized reports. All efforts should be made to utilize the existing computerized records and software to provide this information in the least costly format.

EXPLANATORY NOTE

Corrects a grammatical deficiency.

Sec. 23. RCW 18.71.017 and 1994 sp.s. c 9 s 304 are each amended to read as follows:

The (~~(board {commission})~~) commission may adopt such rules as are not inconsistent with the laws of this state as may be determined necessary or proper to carry out the purposes of this chapter. The commission is the successor in interest of the board of medical examiners and the medical disciplinary board. All contracts, undertakings, agreements, rules, regulations, and policies continue in full force and effect on July 1, 1994, unless otherwise repealed or rejected by this chapter or by the commission.

EXPLANATORY NOTE

Corrects the reference to the Washington state medical quality assurance commission.

Sec. 24. RCW 18.74.012 and 1991 c 12 s 2 are each amended to read as follows:

Notwithstanding the provisions of RCW 18.74.010(~~(4)~~) (3), a consultation and periodic review by an authorized health care practitioner is not required for treatment of neuromuscular or musculoskeletal conditions: PROVIDED, That a physical therapist may only provide treatment utilizing orthoses that support, align, prevent, or correct any structural problems intrinsic to the foot or ankle by referral or consultation from an authorized health care practitioner.

EXPLANATORY NOTE

RCW 18.74.010 was amended by 1991 c 12 s 1 and subsection (4) was renumbered as subsection (3).

Sec. 25. RCW 18.88A.140 and 1991 c 16 s 5 are each amended to read as follows:

Nothing in this chapter may be construed to prohibit or restrict:

- (1) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within their 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)~~) is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 26. RCW 18.104.020 and 1993 c 387 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter, unless a different meaning is plainly required by the context.

(1) "Abandoned well" means a well that is unused, unmaintained, and is in such disrepair as to be unusable.

(2) "Constructing a well" or "construct a well" means:

- (a) Boring, digging, drilling, or excavating a well;
- (b) Installing casing, sheeting, lining, or well screens, in a well; or
- (c) Drilling a geotechnical soil boring.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

(3) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

(4) "Department" means the department of ecology.

(5) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

(6) "Director" means the director of the department of ecology.

(7) "Geotechnical soil boring" or "boring" means an uncased well drilled for purpose of obtaining soil samples to ascertain structural properties of the subsurface. Geotechnical soil boring includes auger borings, rotary borings, cone penetrometer probes and vane shear probes, or any other uncased ground penetration for geotechnical information.

(8) "Ground water" means and includes ground waters as defined in RCW 90.44.035.

(9) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(10) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevation in either clean or contaminated water or soil.

(11) "Observation well" means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

(12) "Operator" means a person who (a) is employed by a well contractor; (b) is licensed under this chapter; or (c) who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(13) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation((+)), association, or other entity who owns the property on which the well is or will be constructed.

(14) "Pollution" and "contamination" have the meanings provided in RCW 90.48.020.

(15) "Resource protection well" means a cased boring used to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, vapor extraction wells, and instrumentation wells.

(16) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(17) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of ground water.

(18) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

(19) "Well" means water wells, resource protection wells, instrumentation wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas,

geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

(20) "Well contractor" means a resource protection well contractor and a water well contractor.

EXPLANATORY NOTE

Corrects a manifest error in punctuation.

Sec. 27. RCW 18.106.180 and 1996 c 147 s 4 are each amended to read as follows:

An authorized representative of the department may issue a notice of infraction as specified in RCW 18.106.020(~~((3))~~) (4) if a person who is doing plumbing work or who is offering to do plumbing work fails to produce evidence of having a certificate or permit issued by the department in accordance with this chapter or of being supervised by a person who has such a certificate or permit. A notice of infraction issued under this section shall be personally served on the person named in the notice by an authorized representative of the department or sent by certified mail to the last known address provided to the department of the person named in the notice.

EXPLANATORY NOTE

RCW 18.106.020 was amended by 1997 c 326 s 3, changing subsection (3) to subsection (4).

Sec. 28. RCW 18.106.250 and 1994 c 174 s 7 are each amended to read as follows:

(1) The administrative law judge shall conduct notice of infraction cases under this chapter pursuant to chapter 34.05 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the notice was issued:

(a) The defendant who was issued a notice of infraction authorized by RCW 18.106.020(~~((3)(a))~~) (4)(a) had a certificate or permit issued by the department in accordance with this chapter, was supervised by a person who has such a certificate or permit, or was exempt from this chapter under RCW 18.106.150; or

(b) For the defendant who was issued a notice of infraction authorized by RCW 18.106.020(~~((3))~~) (4) (b) or (c), the person employed or supervised by the defendant has a certificate or permit issued by the department in accordance with this chapter, was supervised by a person who had such a certificate or permit, or was exempt from this chapter under RCW 18.106.150.

(3) After consideration of the evidence and argument, the administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the record of the proceedings. If it has been established that the infraction was committed, the administrative law judge shall issue findings of fact

and conclusions of law in its decision and order determining whether the infraction was committed.

(4) An appeal from the administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure.

EXPLANATORY NOTE

RCW 18.106.020 was amended by 1997 c 326 s 3, changing subsection (3) to subsection (4).

Sec. 29. RCW 18.130.172 and 1993 c 367 s 7 are each amended to read as follows:

(1) Prior to serving a statement of charges under RCW 18.130.090 or 18.130.170, the disciplinary authority may furnish a statement of allegations to the licensee or applicant along with a detailed summary of the evidence relied upon to establish the allegations and a proposed stipulation for informal resolution of the allegations. These documents shall be exempt from public disclosure until such time as the allegations are resolved either by stipulation or otherwise.

(2) The disciplinary authority and the applicant or licensee may stipulate that the allegations may be disposed of informally in accordance with this subsection. The stipulation shall contain a statement of the facts leading to the filing of the complaint; the act or acts of unprofessional (~~conducted~~ ~~conduct~~) conduct alleged to have been committed or the alleged basis for determining that the applicant or licensee is unable to practice with reasonable skill and safety; a statement that the stipulation is not to be construed as a finding of either unprofessional conduct or inability to practice; an acknowledgement that a finding of unprofessional conduct or inability to practice, if proven, constitutes grounds for discipline under this chapter; and an agreement on the part of the licensee or applicant that the sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and (8), may be imposed as part of the stipulation, except that no fine may be imposed but the licensee or applicant may agree to reimburse the disciplinary authority the costs of investigation and processing the complaint up to an amount not exceeding one thousand dollars per allegation; and an agreement on the part of the disciplinary authority to forego further disciplinary proceedings concerning the allegations. A stipulation entered into pursuant to this subsection shall not be considered formal disciplinary action.

(3) If the licensee or applicant declines to agree to disposition of the charges by means of a stipulation pursuant to subsection (2) of this section, the disciplinary authority may proceed to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

(4) Upon execution of a stipulation under subsection (2) of this section by both the licensee or applicant and the disciplinary authority, the complaint is deemed disposed of and shall become subject to public disclosure on the same basis and to the same extent as other records of the disciplinary authority. Should the licensee or applicant fail to pay any agreed reimbursement within thirty days of the date

specified in the stipulation for payment, the disciplinary authority may seek collection of the amount agreed to be paid in the same manner as enforcement of a fine under RCW 18.130.165.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 30. RCW 18.135.060 and 1993 c 13 s 1 are each amended to read as follows:

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

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

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

(2) A health care assistant trained by a federally approved end-stage renal disease facility may perform venipuncture for blood withdrawal, administration of oxygen as necessary by cannula or mask, venipuncture for placement of fistula needles, intravenous administration of heparin and sodium chloride solutions as an integral part of dialysis treatment, and intradermal, subcutaneous, or topical administration of local anesthetics in conjunction with placement of fistula needles, and intraperitoneal administration of sterile electrolyte solutions and heparin for peritoneal dialysis: (a) In the center or health care facility if a registered nurse licensed under chapter ~~((18.88))~~ 18.79 RCW is physically present and immediately available in such center or health care facility; or (b) in the patient's home if a physician and a registered nurse are available for consultation during the dialysis.

EXPLANATORY NOTE

Chapter 18.88 RCW was repealed by 1994 sp.s. c 9 s 433, effective July 1, 1994, and replaced by chapter 18.79 RCW.

Sec. 31. RCW 18.145.010 and 1989 c 382 s 2 are each amended to read as follows:

(1) No person may 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."

EXPLANATORY NOTE

"Shorthand reporter" or "court reporter" now just "court reporter" pursuant to 1995 c 27.

Sec. 32. RCW 18.155.010 and 1990 c 3 s 801 are each amended to read as follows:

The legislature finds that sex offender therapists who examine and treat sex offenders pursuant to the special sexual offender sentencing alternative under RCW 9.94A.120(~~((7)(a))~~) (8)(a) and who may treat juvenile sex offenders pursuant to RCW 13.40.160, play a vital role in protecting the public from sex offenders who remain in the community following conviction. The legislature finds that the qualifications, practices, techniques, and effectiveness of sex offender treatment providers vary widely and that the court's ability to effectively determine the appropriateness of granting the sentencing alternative and monitoring the offender to ensure continued protection of the community is undermined by a lack of regulated practices. The legislature recognizes the right of sex offender therapists to practice, consistent with the paramount requirements of public safety. Public safety is best served by regulating sex offender therapists whose clients are being evaluated and being treated pursuant to RCW 9.94A.120(~~((7)(a))~~) (8)(a) and 13.40.160. This chapter shall be construed to require only those sex offender therapists who examine and treat sex offenders pursuant to RCW 9.94A.120(~~((7)(a))~~) (8)(a) and 13.40.160 to obtain a sexual offender treatment certification as provided in this chapter.

EXPLANATORY NOTE

RCW 9.94A.120 was amended by 1995 c 108 s 3, changing subsection (7) to subsection (8).

Sec. 33. RCW 18.155.020 and 1990 c 3 s 802 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Certified sex offender treatment provider" means a licensed, certified, or registered health professional who is certified to examine and treat sex offenders pursuant to RCW 9.94A.120(~~((7)(a))~~) (8)(a) and 13.40.160.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health.

(4) "Sex offender treatment provider" means a person who counsels or treats sex offenders accused of or convicted of a sex offense as defined by RCW 9.94A.030.

EXPLANATORY NOTE

RCW 9.94A.120 was amended by 1995 c 108 s 3, changing subsection (7) to subsection (8).

Sec. 34. RCW 18.155.030 and 1990 c 3 s 803 are each amended to read as follows:

(1) No person shall represent himself or herself as a certified sex offender treatment provider without first applying for and receiving a certificate pursuant to this chapter.

(2) Only a certified sex offender treatment provider may perform or provide the following services:

(a) Evaluations conducted for the purposes of and pursuant to RCW 9.94A.120(~~((7)(a))~~) (8)(a) and 13.40.160;

(b) Treatment of convicted sex offenders who are sentenced and ordered into treatment pursuant to RCW 9.94A.120(~~((7)(a))~~) (8)(a) and adjudicated juvenile sex offenders who are ordered into treatment pursuant to RCW 13.40.160.

EXPLANATORY NOTE

RCW 9.94A.120 was amended by 1995 c 108 s 3, changing subsection (7) to subsection (8).

Sec. 35. RCW 18.160.030 and 1992 c 116 s 2 are each amended to read as follows:

(1) This chapter shall be administered by the state director of fire protection.

(2) The state director of fire protection shall have the authority, and it shall be his or her duty to:

(a) Issue such administrative regulations as necessary for the administration of this chapter;

(b)(i) Set reasonable fees for licenses, certificates, testing, and other aspects of the administration of this chapter. However, the license fee for fire protection sprinkler system contractors engaged solely in the installation, inspection, maintenance, or servicing of NFPA 13-D fire protection sprinkler systems shall not exceed one hundred dollars, and the license fee for fire protection sprinkler system contractors engaged solely in the installation, inspection, maintenance, or servicing of NFPA 13-R fire protection sprinkler systems shall not exceed three hundred dollars;

(ii) Adopt rules establishing a special category restricted to contractors registered under chapter 18.27 RCW who install underground systems that service fire protection sprinkler systems. The rules shall be adopted within ninety days of March 31, 1992;

(c) Enforce the provisions of this chapter;

(d) Conduct investigations of complaints to determine if any infractions of this chapter or the regulations developed under this chapter have occurred;

(e) ~~((Work with the fire sprinkler advisory committee consisting of fire protection sprinkler system contractors and other related officials;~~

~~((f))~~ Assign a certificate number to each certificate of competency holder; and

~~((g))~~ (f) Adopt rules necessary to implement and administer a program which requires the affixation of a seal any time a fire protection sprinkler system is installed, which seal shall include the certificate number of any certificate of competency holder who installs, in whole or in part, the fire protection sprinkler system.

EXPLANATORY NOTE

The section creating the fire sprinkler advisory committee, 1990 c 177 s 9, was vetoed by the governor.

Sec. 36. RCW 18.160.040 and 1990 c 177 s 5 are each amended to read as follows:

(1) To become a certificate of competency holder under this chapter, an applicant must have satisfactorily passed an examination administered by the state director of fire protection. A certificate of competency holder can satisfy this examination requirement by presenting a copy of a current certificate of competency from the national institute for certification in engineering technologies showing that the applicant has achieved the classification of engineering technician level 3 or senior engineering technician level 4 in the field of fire protection, automatic sprinkler system layout. The state director of fire protection may accept equivalent proof of qualification in lieu of examination (~~(, as recommended by the fire sprinkler advisory committee)~~). This examination requirement is mandatory except as otherwise provided in this chapter.

(2) Every applicant for a certificate of competency shall fulfill the requirements established by the state director of fire protection (~~(and the fire protection sprinkler system technical advisory committee)~~) under chapter 34.05 RCW.

(3) Every applicant for a certificate of competency shall make application to the state director of fire protection and pay the fees required.

(4) Provided the application for the certificate of competency is made prior to ninety days after May 1, 1991, the state director of fire protection, in lieu of the examination requirements of the applicant for a certificate of competency, may accept as satisfactory evidence of competency and qualification, affidavits attesting that the applicant has had a minimum of three years' experience.

(5) The state director of fire protection may (~~(, after consultation with the fire sprinkler advisory committee,)~~) issue a temporary certificate of competency to an applicant who, in his or her judgment, will satisfactorily perform as a certificate of competency holder under the provisions of this chapter. The temporary certificate of competency shall remain in effect for a period of up to three years. The temporary certificate of competency holder shall, within the three-year period, complete the examination requirements specified in subsection (1) of this section. There shall be no examination exemption for an individual issued a temporary certificate of competency. Prior to the expiration of the three-year period, the temporary certificate of competency holder shall make application for a regular certificate of competency. The procedures and qualifications for issuance of a regular certificate of competency shall be applicable to the temporary certificate of competency holder. When a temporary certificate of competency expires, the holder shall cease all activities associated with the holding of a temporary certificate of competency, subject to the penalties contained in this chapter.

(6) To become a licensed fire protection sprinkler system contractor under this chapter, a person or firm must comply with the following:

(a) Must be or have in his or her full-time employ a holder of a valid certificate of competency;

(b) Comply with the minimum insurance requirements of this chapter; and

(c) Make application to the state director of fire protection for a license and pay the fees required.

(7) Each license and certificate of competency issued under this chapter must be posted in a conspicuous place in the fire protection sprinkler system contractor's place of business.

(8) All bids, advertisements, proposals, offers, and installation drawings for fire protection sprinkler systems must prominently display the fire protection sprinkler system contractor's license number.

(9) A certificate of competency or license issued under this chapter is not transferable.

(10) In no case shall a certificate of competency holder be employed full time by more than one fire protection sprinkler system contractor at the same time. If the certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, he or she must notify the state director of fire protection within thirty days. If the certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, the contractor shall have six months or until the expiration of the current license, whichever occurs last, to submit a new application identifying another certificate of competency holder who is at the time of application an owner of the fire protection sprinkler system business or a full-time employee of the fire protection sprinkler system contractor, in order to be issued a new license. If such application is not received and a new license issued within the allotted time, the state director of fire protection shall revoke the license of the fire protection sprinkler system contractor.

EXPLANATORY NOTE

The section creating the fire sprinkler advisory committee, 1990 c 177 s 9, was vetoed by the governor.

Sec. 37. RCW 18.165.020 and 1995 c 277 s 18 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 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~~) department of financial institutions 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.

EXPLANATORY NOTE

Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See chapter 43.320 RCW.

Sec. 38. RCW 18.165.130 and 1995 c 277 s 31 are each amended to read as follows:

- (1) A private investigator agency shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed private investigator or armed private investigator by returning the license to the department with the word (~~terminated~~) "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 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 investigator's or armed private 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.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 39. RCW 18.170.110 and 1995 c 277 s 8 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")~~) "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.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 40. RCW 18.185.010 and 1996 c 242 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 department of licensing.

(2) "Director" means the director of licensing.

(3) "Collateral or security" means property of any kind given as security to obtain a bail bond.

(4) "Bail bond agency" means a business that sells and issues corporate surety bail bonds or that provides security in the form of personal or real property to insure the appearance of a criminal defendant before the courts of this state or the United States.

(5) "Qualified agent" means an owner, sole proprietor, partner, manager, officer, or chief operating officer of a corporation who meets the requirements set forth in this chapter for obtaining a bail bond agency license.

(6) "Bail bond agent" means a person who is employed by a bail bond agency and engages in the sale or issuance of bail bonds, but does not mean a clerical, secretarial, or other support person who does not participate in the sale or issuance of bail bonds.

(7) "Licensee" means a bail bond agency or a bail bond agent or both.

(8) "Branch office" means any office physically separated from the principal place of business of the licensee from which the licensee or an employee or agents conduct any activity meeting the criteria of ~~((a))~~ a bail bond agency.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 41. RCW 18.205.030 and 1998 c 243 s 3 are each amended to read as follows:

No person may represent oneself as a certified chemical dependency professional or use any title or description of services of ~~((a))~~ a certified chemical dependency professional without applying for certification, meeting the required qualifications, and being certified by the department of health, unless otherwise exempted by this chapter.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 42. RCW 18.205.100 and 1998 c 243 s 10 are each amended to read as follows:

The secretary may establish by rule the standards and procedures for approval of educational programs and alternative training. The secretary may utilize or contract with individuals or organizations having expertise in the profession or in education to assist in the evaluations. The secretary shall establish by rule the standards and procedures for revocation of approval of ~~((education-educational))~~ educational programs. The standards and procedures set shall apply equally to educational programs and training in the United States and in foreign jurisdictions. The secretary may establish a fee for educational program evaluations.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 43. RCW 19.02.110 and 1988 c 5 s 3 are each amended to read as follows:

In addition to the licenses processed under the master license system prior to April 1, 1982, on July 1, 1982, use of the master license system shall be expanded as provided by this section.

Applications for the following shall be filed with the business license center and shall be processed, and renewals shall be issued, under the master license system:

- (1) Nursery dealer's licenses required by chapter 15.13 RCW;
- (2) Seed dealer's licenses required by chapter 15.49 RCW;
- (3) Pesticide dealer's licenses required by chapter 15.58 RCW;
- (4) Shopkeeper's licenses required by chapter 18.64 RCW;
- (5) Refrigerated locker licenses required by chapter 19.32 RCW;
- (6) ~~((Wholesalers licenses and retailers licenses required by chapter 19.91 RCW;~~
- ~~—(7))~~ Egg dealer's licenses required by chapter 69.25 RCW.

EXPLANATORY NOTE

Chapter 19.91 RCW was repealed by 1986 c 321 s 14, effective July 1, 1991.

Sec. 44. RCW 19.02.800 and 1982 c 182 s 17 are each amended to read as follows:

Except as provided in RCW 43.07.200, the provisions of this chapter regarding the processing of license applications and renewals under a master license system shall not apply to those business or professional activities that are licensed or regulated under chapter 31.04, ~~((31.08;))~~ 31.12, 31.12A, or 31.13 RCW or under Title 30, 32, 33, or 48 RCW.

EXPLANATORY NOTE

Chapter 31.08 RCW was repealed by 1991 c 208 s 24, effective January 1, 1993.

Sec. 45. RCW 19.27A.050 and 1985 c 144 s 5 are each amended to read as follows:

As used in this chapter, references to the state building code ~~((advisory))~~ council shall be construed to include any successor agency.

EXPLANATORY NOTE

The "state building code advisory council" was redesignated as the "state building code council" by 1985 c 360 s 11.

Sec. 46. RCW 19.28.015 and 1988 c 81 s 2 are each amended to read as follows:

Disputes arising under RCW 19.28.010~~((2))~~ (3) regarding whether the city or town's electrical rules, regulations, or ordinances are equal to the rules adopted by the department shall be resolved by arbitration. The department shall appoint two members of the board to serve on the arbitration panel, and the city or town shall appoint two persons to serve on the arbitration panel. These four persons shall choose a fifth person to serve. If the four persons cannot agree on a fifth person, the presiding judge of the superior court of the county in which the city or town is located shall choose a fifth person. A decision of the arbitration panel may be appealed to the superior court of the county in which the city or town is located within thirty days after the date the panel issues its final decision.

EXPLANATORY NOTE

RCW 19.28.010 was reenacted and amended by 1992 c 79 s 2, changing subsection (2) to subsection (3).

Sec. 47. RCW 19.28.370 and 1980 c 30 s 17 are each amended to read as follows:

The provisions of RCW 19.28.010 through ~~((19.28.380))~~ 19.28.360 shall not apply to the work of installing, maintaining or repairing any and all electrical wires, apparatus, installations or equipment used or to be used by a telegraph company

or a telephone company in the exercise of its functions and located outdoors or in a building or buildings used exclusively for that purpose.

EXPLANATORY NOTE

RCW 19.28.380 was repealed by 1986 c 156 s 18.

Sec. 48. RCW 19.30.200 and 1985 c 280 s 14 are each amended to read as follows:

Any person who knowingly uses the services of an unlicensed farm labor contractor shall be personally, jointly, and severally liable with the person acting as a farm labor contractor to the same extent and in the same manner as provided in this chapter. In making determinations under this ~~((subsection {section}))~~ section, any user may rely upon either the license issued by the director to the farm labor contractor under RCW 19.30.030 or the director's representation that such contractor is licensed as required by this chapter.

EXPLANATORY NOTE

Corrects an inaccurate reference.

Sec. 49. RCW 19.32.150 and 1943 c 117 s 8 are each amended to read as follows:

The director of agriculture shall cause to be made periodically a thorough inspection of each establishment licensed under this chapter to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this chapter and of all other laws of this state applicable to the operation either of refrigerated lockers or of the handling of human food in connection therewith, and of all regulations effective under this chapter relative to such operation. Such inspection shall also be made of each vehicle used by ~~((an))~~ an operator of refrigerated lockers or of an establishment handling human food in connection therewith, when such vehicle is used in transporting or distributing human food products to or from refrigerated lockers within this state.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 50. RCW 19.34.020 and 1999 c 287 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) "Accept a certificate" means to manifest approval of a certificate, while knowing or having notice of its contents. Such approval may be manifested by the use of the certificate.

(2) "Accept a digital signature" means to verify a digital signature or take an action in reliance on a digital signature.

(3) "Asymmetric cryptosystem" means an algorithm or series of algorithms that provide a secure key pair.

(4) "Certificate" means a computer-based record that:

(a) Identifies the certification authority issuing it;

- (b) Names or identifies its subscriber;
 - (c) Contains the subscriber's public key; and
 - (d) Is digitally signed by the certification authority issuing it.
- (5) "Certification authority" means a person who issues a certificate.
- (6) "Certification authority disclosure record" means an on-line, publicly accessible record that concerns a licensed certification authority and is kept by the secretary.
- (7) "Certification practice statement" means a declaration of the practices that a certification authority employs in issuing certificates.
- (8) "Certify" means to declare with reference to a certificate, with ample opportunity to reflect, and with a duty to apprise oneself of all material facts.
- (9) "Confirm" means to ascertain through appropriate inquiry and investigation.
- (10) "Correspond," with reference to keys, means to belong to the same key pair.
- (11) "Digital signature" means an electronic signature that is a transformation of a message using an asymmetric cryptosystem such that a person having the initial message and the signer's public key can accurately determine:
- (a) Whether the transformation was created using the private key that corresponds to the signer's public key; and
 - (b) Whether the initial message has been altered since the transformation was made.
- (12) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies.
- (13) "Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.
- (14) "Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record, including but not limited to a digital signature.
- (15) "Financial institution" means a national or state-chartered commercial bank or trust company, savings bank, savings association, or credit union authorized to do business in the state of Washington and the deposits of which are federally insured.
- (16) "Forge a digital signature" means either:
- (a) To create a digital signature without the authorization of the rightful holder of the private key; or
 - (b) To create a digital signature verifiable by a certificate listing as subscriber a person who either:
 - (i) Does not exist; or
 - (ii) Does not hold the private key corresponding to the public key listed in the certificate.

(17) "Hold a private key" means to be authorized to utilize a private key.

(18) "Incorporate by reference" means to make one message a part of another message by identifying the message to be incorporated and expressing the intention that it be incorporated.

(19) "Issue a certificate" means the acts of a certification authority in creating a certificate and notifying the subscriber listed in the certificate of the contents of the certificate.

(20) "Key pair" means a private key and its corresponding public key in an asymmetric cryptosystem, keys which have the property that the public key can verify a digital signature that the private key creates.

(21) "Licensed certification authority" means a certification authority to whom a license has been issued by the secretary and whose license is in effect.

(22) "Message" means a digital representation of information.

(23) "Notify" means to communicate a fact to another person in a manner reasonably likely under the circumstances to impart knowledge of the information to the other person.

(24) "Official public business" means any legally authorized transaction or communication among state agencies, tribes, and local governments, or between a state agency, tribe, or local government and a private person or entity.

(25) "Operative personnel" means one or more natural persons acting as a certification authority or its agent, or in the employment of, or under contract with, a certification authority, and who have:

(a) Duties directly involving the issuance of certificates, ~~((for))~~ or creation of private keys;

(b) Responsibility for the secure operation of the trustworthy system used by the certification authority or any recognized repository;

(c) Direct responsibility, beyond general supervisory authority, for establishing or adopting policies regarding the operation and security of the certification authority; or

(d) Such other responsibilities or duties as the secretary may establish by rule.

(26) "Person" means a human being or an organization capable of signing a document, either legally or as a matter of fact.

(27) "Private key" means the key of a key pair used to create a digital signature.

(28) "Public key" means the key of a key pair used to verify a digital signature.

(29) "Publish" means to make information publicly available.

(30) "Qualified right to payment" means an award of damages against a licensed certification authority by a court having jurisdiction over the certification authority in a civil action for violation of this chapter.

(31) "Recipient" means a person who has received a certificate and a digital signature verifiable with reference to a public key listed in the certificate and is in a position to rely on it.

(32) "Recognized repository" means a repository recognized by the secretary under RCW 19.34.400.

(33) "Recommended reliance limit" means the monetary amount recommended for reliance on a certificate under RCW 19.34.280(1).

(34) "Repository" means a system for storing and retrieving certificates and other information relevant to digital signatures.

(35) "Revoke a certificate" means to make a certificate ineffective permanently from a specified time forward. Revocation is effected by notation or inclusion in a set of revoked certificates, and does not imply that a revoked certificate is destroyed or made illegible.

(36) "Rightfully hold a private key" means the authority to utilize a private key:

(a) That the holder or the holder's agents have not disclosed to a person in violation of RCW 19.34.240(1); and

(b) That the holder has not obtained through theft, deceit, eavesdropping, or other unlawful means.

(37) "Secretary" means the secretary of state.

(38) "Subscriber" means a person who:

(a) Is the subject listed in a certificate;

(b) Applies for or accepts the certificate; and

(c) Holds a private key that corresponds to a public key listed in that certificate.

(39) "Suitable guaranty" means either a surety bond executed by a surety authorized by the insurance commissioner to do business in this state, or an irrevocable letter of credit issued by a financial institution authorized to do business in this state, which, in either event, satisfies all of the following requirements:

(a) It is issued payable to the secretary for the benefit of persons holding qualified rights of payment against the licensed certification authority named as the principal of the bond or customer of the letter of credit;

(b) It is in an amount specified by rule by the secretary under RCW 19.34.030;

(c) It states that it is issued for filing under this chapter;

(d) It specifies a term of effectiveness extending at least as long as the term of the license to be issued to the certification authority; and

(e) It is in a form prescribed or approved by rule by the secretary.

A suitable guaranty may also provide that the total annual liability on the guaranty to all persons making claims based on it may not exceed the face amount of the guaranty.

(40) "Suspend a certificate" means to make a certificate ineffective temporarily for a specified time forward.

(41) "Time stamp" means either:

(a) To append or attach a digitally signed notation indicating at least the date, time, and identity of the person appending or attaching the notation to a message, digital signature, or certificate; or

(b) The notation thus appended or attached.

(42) "Transactional certificate" means a valid certificate incorporating by reference one or more digital signatures.

(43) "Trustworthy system" means computer hardware and software that:

(a) Are reasonably secure from intrusion and misuse; and

(b) Conform with the requirements established by the secretary by rule.

(44) "Valid certificate" means a certificate that:

(a) A licensed certification authority has issued;

(b) The subscriber listed in it has accepted;

(c) Has not been revoked or suspended; and

(d) Has not expired.

However, a transactional certificate is a valid certificate only in relation to the digital signature incorporated in it by reference.

(45) "Verify a digital signature" means, in relation to a given digital signature, message, and public key, to determine accurately that:

(a) The digital signature was created by the private key corresponding to the public key; and

(b) The message has not been altered since its digital signature was created.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 51. RCW 19.34.250 and 1999 c 287 s 13 are each amended to read as follows:

(1) Unless the certification authority provides otherwise in the certificate or its certification practice statement, the licensed certification authority that issued a certificate that is not a transactional certificate must suspend the certificate for a period not to exceed five business days:

(a) Upon request by a person whom the certification authority reasonably believes to be: (i) The subscriber named in the certificate; (ii) a person duly authorized to act for that subscriber; or (iii) a person acting on behalf of the unavailable subscriber; or

(b) By order of the secretary under RCW 19.34.210(~~(5)~~) (7).

The certification authority need not confirm the identity or agency of the person requesting suspension. The certification authority may require the person requesting suspension to provide evidence, including a statement under oath or affirmation, regarding the requestor's identity, authorization, or the unavailability of the subscriber. Law enforcement agencies may investigate suspensions for possible wrongdoing by persons requesting suspension.

(2) Unless the certification authority provides otherwise in the certificate or its certification practice statement, the secretary may suspend a certificate issued

by a licensed certification authority for a period not to exceed five business days, if:

(a) A person identifying himself or herself as the subscriber named in the certificate, a person authorized to act for that subscriber, or a person acting on behalf of that unavailable subscriber (~~((requests suspension))~~) requests suspension; and

(b) The requester represents that the certification authority that issued the certificate is unavailable.

The secretary may require the person requesting suspension to provide evidence, including a statement under oath or affirmation, regarding his or her identity, authorization, or the unavailability of the issuing certification authority, and may decline to suspend the certificate in its discretion. Law enforcement agencies may investigate suspensions by the secretary for possible wrongdoing by persons requesting suspension.

(3) Immediately upon suspension of a certificate by a licensed certification authority, the licensed certification authority must give notice of the suspension according to the specification in the certificate. If one or more repositories are specified, then the licensed certification authority must publish a signed notice of the suspension in all the repositories. If a repository no longer exists or refuses to accept publication, or if no repository is recognized under RCW 19.34.400, the licensed certification authority must also publish the notice in a recognized repository. If a certificate is suspended by the secretary, the secretary must give notice as required in this subsection for a licensed certification authority, provided that the person requesting suspension pays in advance any fee required by a repository for publication of the notice of suspension.

(4) A certification authority must terminate a suspension initiated by request only:

(a) If the subscriber named in the suspended certificate requests termination of the suspension, the certification authority has confirmed that the person requesting suspension is the subscriber or an agent of the subscriber authorized to terminate the suspension; or

(b) When the certification authority discovers and confirms that the request for the suspension was made without authorization by the subscriber. However, this subsection (4)(b) does not require the certification authority to confirm a request for suspension.

(5) The contract between a subscriber and a licensed certification authority may limit or preclude requested suspension by the certification authority, or may provide otherwise for termination of a requested suspension. However, if the contract limits or precludes suspension by the secretary when the issuing certification authority is unavailable, the limitation or preclusion is effective only if notice of it is published in the certificate.

(6) No person may knowingly or intentionally misrepresent to a certification authority his or her identity or authorization in requesting suspension of a certificate. Violation of this subsection is a gross misdemeanor.

(7) The secretary may authorize other state or local governmental agencies to perform any of the functions of the secretary under this section upon a regional basis. The authorization must be formalized by an agreement under chapter 39.34 RCW. The secretary may provide by rule the terms and conditions of the regional services.

(8) A suspension under this section must be completed within twenty-four hours of receipt of all information required in this section.

EXPLANATORY NOTE

RCW 19.34.210 was amended by 1999 c 287 s 11, changing subsection (5) to subsection (7). Also corrects an apparent drafting error.

Sec. 52. RCW 19.34.901 and 1997 c 27 s 28 are each amended to read as follows:

(1) Sections ~~((1-101))~~ 101 through 601, 604, and 605, chapter 250, Laws of 1996 take effect January 1, 1998.

(2) Sections 602 and 603, chapter 250, Laws of 1996 take effect July 27, 1997.

EXPLANATORY NOTE

Corrects a manifest drafting error.

Sec. 53. RCW 19.36.100 and 1990 c 211 s 1 are each amended to read as follows:

"Credit agreement" means an agreement, promise, or commitment to lend money, to otherwise extend credit, to forbear with respect to the repayment of any debt or the exercise of any remedy, to modify or amend the terms under which the creditor has lent money or otherwise extended credit, to release any guarantor or ~~((cosigner [esigner]))~~ cosigner, or to make any other financial accommodation pertaining to a debt or other extension of credit.

EXPLANATORY NOTE

Corrects an apparent typographical error.

Sec. 54. RCW 19.40.071 and 1987 c 444 s 7 are each amended to read as follows:

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in RCW 19.40.081, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by chapter ~~((7-12))~~ 6.25 RCW;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

- (i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - (ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - (iii) Any other relief the circumstances may require.
- (b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

EXPLANATORY NOTE

Chapter 7.12 RCW was recodified by 1987 c 442 s 1121. Of the thirty-two sections that previously comprised chapter 7.12 RCW, twenty-four sections were recodified in chapter 6.25 RCW, seven sections were repealed, and one section was recodified in chapter 6.17 RCW.

Sec. 55. RCW 19.56.010 and 1890 p 460 s 1 are each amended to read as follows:

Whenever any person, company or corporation owning or controlling any newspaper or periodical of any kind, or whenever any editor or proprietor of any such newspaper or periodical shall mail or send any such newspaper or periodical to any person or persons in this state without first receiving an order for said newspaper or periodical from such person or persons to whom said newspaper or periodical is mailed or sent, ~~((fit))~~ it shall be deemed to be a gift, and no debt or obligation shall accrue against such person or persons, whether said newspaper or periodical is received by the person or persons to whom it is sent or not.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 56. RCW 19.60.085 and 1985 c 70 s 2 are each amended to read as follows:

The provisions of this chapter do not apply to transactions conducted by the following:

- (1) Motor vehicle dealers licensed under chapter 46.70 RCW;
- (2) ~~((Motor))~~ Vehicle wreckers or hulk haulers licensed under chapter 46.79 or 46.80 RCW;
- (3) Persons giving an allowance for the trade-in or exchange of second-hand property on the purchase of other merchandise of the same kind of greater value; and
- (4) Persons in the business of buying or selling empty food and beverage containers or metal or nonmetal junk.

EXPLANATORY NOTE

"Motor vehicle wrecker" redesignated "vehicle wrecker" by 1995 c 256.

Sec. 57. RCW 19.68.040 and 1949 c 204 s 4 are each amended to read as follows:

It is the intent of this (~~article~~-~~chapter~~) chapter, and this (~~article~~-~~chapter~~) chapter shall be so construed, that persons so licensed shall only be authorized by law to charge or receive compensation for professional services rendered if such services are actually rendered by the licensee and not otherwise: PROVIDED, HOWEVER, That it is not intended to prohibit two or more licensees who practice their profession as copartners to charge or collect compensation for any professional services by any member of the firm, or to prohibit a licensee who employs another licensee to charge or collect compensation for professional services rendered by the employee licensee.

EXPLANATORY NOTE

Corrects an inaccurate reference.

Sec. 58. RCW 19.72.040 and 1987 c 202 s 186 are each amended to read as follows:

In case such bond or recognizance is given in any action or proceeding commenced or pending in any court, the judge or clerk of any court of record or district court, or any party to the action or proceeding for the security or protection of which such bond or recognizance is made may, upon notice, require any of such sureties to attend before the judge at a time and place specified and to be examined under oath touching the surety's qualifications both as to residence and property as such surety, in such manner as the judge, in the judge's discretion, may think proper. If the party demanding the examination require it, the examination shall be reduced to writing and subscribed by the surety. If the judge (~~finds~~) finds the surety possesses the requisite qualifications and property, the judge shall endorse the allowance thereof on the bond or recognizance, and cause it to be filed as provided by law, otherwise it shall be of no effect.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 59. RCW 19.80.065 and 1984 c 130 s 8 are each amended to read as follows:

RCW 42.17.260(~~(5)~~) (9) does not apply to registrations made under this chapter.

EXPLANATORY NOTE

RCW 42.17.260 was amended by 1989 c 175 s 36, changing subsection (5) to subsection (6). RCW 42.17.260 was subsequently amended by 1992 c 139 s 3, changing subsection (6) to subsection (7). RCW 42.17.260 was subsequently amended by 1995 c 341 s I, changing subsection (7) to subsection (9).

Sec. 60. RCW 19.85.030 and 1995 c 403 s 402 are each amended to read as follows:

(1) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (a) If the proposed rule will impose more than minor costs on businesses in an industry; or (b) if requested to

do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. However, if the agency has completed the pilot rule process as defined by RCW 34.05.313 before filing the notice of a proposed rule, the agency is not required to prepare a small business economic impact statement.

An agency shall prepare the small business economic impact statement in accordance with RCW 19.85.040, and file it with the code reviser along with the notice required under RCW 34.05.320. An agency shall file a statement prepared at the request of the joint administrative rules review committee with the code reviser upon its completion before the adoption of the rule. An agency shall provide a copy of the small business economic impact statement to any person requesting it.

~~((An agency may request assistance from the business assistance center in the preparation of the small business economic impact statement.))~~

~~(2) ((The business assistance center shall develop guidelines to assist agencies in determining whether a proposed rule will impose more than minor costs on businesses in an industry and therefore require preparation of a small business economic impact statement. The business assistance center may review an agency determination that a proposed rule will not impose such costs, and shall advise the joint administrative rules review committee on disputes involving agency determinations under this section.~~

~~—(3))~~ Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. Methods to reduce the costs on small businesses may include:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques.

EXPLANATORY NOTE

The business assistance center and its powers and duties were terminated June 30, 1995. See 1993 c 280 ss 80 and 81.

Sec. 61. RCW 19.94.258 and 1995 c 355 s 15 are each amended to read as follows:

(1) Except as authorized by the department, a service agent who intends to provide the examination that permits a weighing or measuring instrument or device to be placed back into commercial service under RCW 19.94.255(3) shall receive an official registration certificate from the director prior to performing such a

service. This registration requirement does not apply to the department or a city sealer.

(2) Except as provided in RCW (~~(19.94.035)~~) 19.94.2584, a registration certificate is valid for one year. It may be renewed by submitting a request for renewal to the department.

EXPLANATORY NOTE

RCW 19.94.035 was recodified as RCW 19.94.2584 pursuant to RCW 1.08.015(2)(k), September 1996.

Sec. 62. RCW 19.94.2584 and 1995 c 355 s 17 are each amended to read as follows:

(1) The department shall have the power to revoke, suspend, or refuse to renew the official registration certificate of any service agent for any of the following reasons:

(a) Fraud or deceit in obtaining an official registration certificate under this chapter;

(b) A finding by the department of a pattern of intentional fraudulent or negligent activities in the installation, inspection, testing, checking, adjusting, or systematically standardizing and approving the graduations of any weighing or measuring instrument or device;

(c) Knowingly placing back into commercial service any weighing or measuring instrument or device that is incorrect;

(d) A violation of any provision of this chapter; or

(e) Conviction of a crime or an act constituting a crime under the laws of this state, the laws of another state, or federal law.

(2) Upon the department's revocation of, suspension of, or refusal to (~~renewal~~ {renew}) renew an official registration certificate, an individual shall have the right to appeal this decision in accordance with the administrative procedure act, chapter 34.05 RCW.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 63. RCW 19.94.310 and 1992 c 237 s 21 are each amended to read as follows:

(1) The governing body of each city for which a city sealer has been appointed as provided for by RCW 19.94.280 shall:

(a) Procure at the expense of the city the official weights and measures standards and any field weights and measures standards necessary for the administration and enforcement of the provisions of this chapter or any rule that may be prescribed by the director;

(b) Provide a suitable office for the city sealer and any deputies that have been duly appointed; and

(c) Make provision for the necessary clerical services, supplies, transportation and for defraying contingent expenses incidental to the official activities of the city sealer and his or her deputies in carrying out the provisions of this chapter.

(2) When the acquisition of the official weights and measures standards required under subsection (1)(a) of this section has been made and such weights and measures standards have been examined and approved by the director, they shall be the certified weights and measures standards for such city.

(3) In order to maintain field weights and (~~measure{s}~~) measures standards in accurate condition, the city sealer shall, at least once every two years, compare the field weights and measures standards used within his or her city to the certified weights and measures standards of such city or to the official weights and measures standards of this state.

EXPLANATORY NOTE

Corrects a manifest typographical error.

Sec. 64. RCW 19.94.390 and 1995 c 355 s 20 are each amended to read as follows:

(1) Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, (~~poster-posted~~) posted or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and one-half the width of the numerals representing the whole cents.

(2) The examination procedure recommended for price verification by the price verification working group of the laws and regulations committee of the national conference on weights and measures (as reflected in the fourth draft, dated November 1, 1994) for devices such as electronic scanners shall govern such examinations conducted under this chapter. The procedure shall be deemed to be adopted under this chapter. However, the department may revise the procedure as follows: The department shall provide notice of and conduct a public hearing pursuant to chapter 34.05 RCW to determine whether any revisions to this procedure made by the national institute of standards and technology or its successor organization for incorporating the examination procedure into an official handbook of the institute or its successor, or any subsequent revisions of the handbook regarding such procedures shall also be adopted under this chapter. If the department determines that the procedure should be so revised, it may adopt the revisions. Violations of this section regarding the use of devices such as electronic scanners may be found only as provided by the examination procedures adopted by or under this subsection.

(3) Electronic scanner screens installed after January 1, 1996, and used in retail establishments must be visible to the consumer at the checkout line.

EXPLANATORY NOTE

Corrects a manifest typographical error.

Sec. 65. RCW 19.94.505 and 1992 c 237 s 34 are each amended to read as follows:

(1) It is unlawful for any dealer (~~(or service station)~~), as (~~both are~~) defined in RCW 82.36.010, to sell ethanol and/or methanol at one percent, by volume, or greater in gasoline for use as motor vehicle fuel unless the dispensing device has a label stating the type and maximum percentage of alcohol contained in the motor vehicle fuel.

(2) In any county, city, or other political subdivision designated as a carbon monoxide nonattainment area pursuant to the provisions of subchapter I of the clean air act amendments of 1990, P.L. 101-549, and in which the sale of oxygenated petroleum products is required by section 211(m) of the clean air act amendments of 1990, 42 U.S.C. 7545(m), any dealer (~~(or service station)~~), as (~~both are~~) defined in RCW 82.36.010, who sells or dispenses a petroleum product that contains at least one percent, by volume, ethanol, methanol, or other oxygenate, shall post only such label or notice as may be required pursuant to 42 U.S.C. 7545(m)(4) or any amendments thereto or any successor provision thereof. This provision shall be applicable only during such portion of the year as oxygenated petroleum product sales are required pursuant to 42 U.S.C. 7545(m).

(3) Any person who violates this section is subject to a civil penalty of no more than five hundred dollars.

EXPLANATORY NOTE

RCW 82.36.010 was amended by 1998 c 176 s 6, deleting the definition of "service station."

Sec. 66. RCW 19.98.020 and 1975 1st ex.s. c 277 s 2 are each amended to read as follows:

All repurchase payments to retailers and sellers made pursuant to RCW 19.98.010 shall be less amounts owed on any lien or claim then outstanding upon such items covered by this section. Any wholesaler, manufacturer, or distributor making repurchase payments covered by this chapter to any retailer or seller shall satisfy such secured liens or claims pursuant to (~~(chapter {article})~~) Article 62A.9 RCW less any interest owed to the lienholder arising from the financing of such items which shall be paid to any such secured lienholder by the retailer or seller. In no case shall the wholesaler, manufacturer, or distributor, in making payments covered by RCW 19.98.010, pay in excess of those amounts prescribed therein.

EXPLANATORY NOTE

Corrects an inaccurate reference.

Sec. 67. RCW 19.98.110 and 1990 c 124 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 19.98.100 through 19.98.150 and 19.98.911:

(1) "Equipment" means machinery consisting of a framework, various fixed and moving parts, driven by an internal combustion engine, and all other implements associated with this machinery that are designed for or adapted and used for agriculture, horticulture, livestock, or grazing use.

(2) "Equipment dealer" or "equipment dealership" means any person, partnership, corporation, association, or other form of business enterprise, primarily engaged in retail sale or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services, but does not include dealers covered by chapter 46.70 or 46.94 RCW.

(3) "Supplier" means the manufacturer, wholesaler, or distributor of the equipment to be sold by the equipment dealer.

(4) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute, or service the supplier's equipment where there is a continuing commercial relationship between the supplier and the equipment dealer.

(5) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by ~~((the))~~ the supplier.

(6) "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided such requirements are not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 68. RCW 19.105.330 and 1988 c 159 s 5 are each amended to read as follows:

~~((1))~~ (1) Unless an order denying effectiveness under RCW 19.105.380 is in effect, or unless declared effective by order of the director prior thereto, the application for registration shall automatically become effective upon the expiration of the twentieth full business day following a filing with the director in complete and proper form, but an applicant may consent to the delay of effectiveness until such time as the director may by order declare registration effective or issue a permit to market.

(2) An application for registration, renewal of registration, or amendment is not in completed form and shall not be deemed a statutory filing until such time as all required fees, completed application forms, and the information and documents required pursuant to RCW 19.105.320(1) and departmental rules have been filed.

It is the operator's responsibility to see that required filing materials and fees arrive at the appropriate mailing address of the department. Within seven business days, excluding the date of receipt, of receiving an application or initial request for registration and the filing fees, the department shall notify the applicant of receipt of the application and whether or not the application is complete and in proper form. If the application is incomplete, the department shall at the same time inform the applicant what additional documents or information is required.

If the application is not in a completed form, the department shall give immediate notice to the applicant. On the date the application is complete and properly filed, the statutory period for an in-depth examination of the filing, prescribed in subsection (1) of this section, shall begin to run, unless the applicant and the department have agreed to a stay of effectiveness or the department has issued a denial of the application or a permit to market.

EXPLANATORY NOTE

Corrects a manifest clerical error.

Sec. 69. RCW 19.105.470 and 1988 c 159 s 23 are each amended to read as follows:

(1) 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, any withdrawal of a camping resort property in violation of RCW 19.105.380(~~((+)(j))~~) (1)(q), or any rule, order, or permit issued under this chapter, the director may in his or her discretion issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. However, the director may issue a temporary order pending the hearing which shall be effective immediately upon delivery to the person affected and 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 receipt of notice.

(2) If it appears necessary in order to protect the interests of members and purchasers, whether or not the director has issued a cease and desist order, the attorney general in the name of the state, the director, the proper prosecuting attorney, an affiliated members' common-interest association, or a group of members as a class, may 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, order, or permit under this chapter. 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, for the defendant's assets, or to protect the interests or assets of a members' common-interest association or the members of a camping resort as a class. The state, the director, a members' common-interest association, or members as a class shall not be required to post a bond in such proceedings.

EXPLANATORY NOTE

The reference to RCW 19.105.380(1)(j) appears to be erroneous. Before March 20, 1988, the reference was to RCW 19.105.380(9). Chapter 159, Laws of 1988 placed the text of RCW 19.105.380(9) in RCW 19.105.380(1)(q), effective March 20, 1988.

Sec. 70. RCW 19.116.030 and 1990 c 44 s 4 are each amended to read as follows:

Unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles ~~((are—{is}))~~ is 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 for the purpose of applying the consumer protection act, chapter 19.86 RCW.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 71. RCW 19.116.050 and 1990 c 44 s 6 are each amended to read as follows:

A dealer engages in an act of unlawful transfer of ownership interest in motor vehicles when all of the following circumstances are met:

(1) The dealer does not pay off any balance due to the secured party on a vehicle acquired by the dealer, no later than the close of the second business day after the acquisition date of the vehicle; and

(2) The dealer does not obtain a certificate of ownership under RCW ~~((46.12.140))~~ 46.70.124 for each used vehicle kept in his or her possession unless that certificate is in the possession of the person holding a security interest in the dealer's inventory; and

(3) The dealer does not transfer the certificate of ownership after the transferee has taken possession of the motor vehicle.

EXPLANATORY NOTE

RCW 46.12.140 was recodified as RCW 46.70.124 pursuant to 1993 c 307 s 18.

Sec. 72. RCW 19.120.080 and 1986 c 320 s 9 are each amended to read as follows:

Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the motor fuel refiner-supplier and the motor fuel retailers:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

(a) Require a motor fuel retailer to purchase or lease goods or services of the motor fuel refiner-supplier or from approved sources of supply unless and to the

extent that the motor fuel refiner-supplier satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the motor fuel franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(b) Discriminate between motor fuel retailers in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the motor fuel refiner-supplier satisfies the burden of proving that any classification of or discrimination between motor fuel retailers is reasonable, is based on motor fuel franchises granted at materially different times and such discrimination is reasonably related to such difference in time or on other proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary.

(c) Sell, rent, or offer to sell to a motor fuel retailer any product or service for more than a fair and reasonable price.

(d) Require ~~((f#))~~ a motor fuel retailer to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 73. RCW 19.138.021 and 1996 c 180 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 department of licensing.

(2) "Director" means the director of licensing or the director's designee.

(3) "Seller of travel" means a person, firm, or corporation both inside and outside the state of Washington, who transacts business with Washington consumers for travel services.

(a) "Seller of travel" includes a travel agent and any person who is an independent contractor or outside agent for a travel agency or other seller of travel whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations in the conduct or administration of its business. If a seller of travel is employed by a seller of travel who is registered under this chapter, the employee need not also be registered.

(b) "Seller of travel" does not include:

(i) An air carrier;

(ii) An owner or operator of a vessel, including an ocean common carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of a vessel that is required to establish its financial responsibility in accordance with the requirements

of the federal maritime commission, 46 U.S.C. App. 817 (e), and a steamboat company (~~as defined in RCW 84.12.200~~) whether or not operating over and upon the waters of this state;

(iii) A motor carrier;

(iv) A rail carrier;

(v) A charter party carrier of passengers as defined in RCW 81.70.020;

(vi) An auto transportation company as defined in RCW 81.68.010;

(vii) A hotel or other lodging accommodation;

(viii) An affiliate of any person or entity described in (i) through (vii) of this subsection (3)(b) that is primarily engaged in the sale of travel services provided by the person or entity. For purposes of this subsection (3)(b)(viii), an "affiliate" means a person or entity owning, owned by, or under common ownership, with "owning," "owned," and "ownership" referring to equity holdings of at least eighty percent;

(ix) Direct providers of transportation by air, sea, or ground, or hotel or other lodging accommodations who do not book or arrange any other travel services.

(4) "Travel services" includes transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

(5) "Advertisement" includes, but is not limited to, a written or graphic representation in a card, brochure, newspaper, magazine, directory listing, or display, and oral, written, or graphic representations made by radio, television, or cable transmission that relates to travel services.

(6) "Transacts business with Washington consumers" means to directly offer or sell travel services to Washington consumers, including the placement of advertising in media based in the state of Washington or that is primarily directed to Washington residents. Advertising placed in national print or electronic media alone does not constitute "transacting business with Washington consumers." Those entities who only wholesale travel services are not "transacting business with Washington consumers" for the purposes of this chapter.

EXPLANATORY NOTE

RCW 84.12.200 was amended by 1998 c 335 s 1, removing the definition of steamboat company.

Sec. 74. RCW 19.146.260 and 1997 c 106 s 18 are each amended to read as follows:

Every licensed mortgage broker that does not maintain a physical office within the state must maintain a registered agent within the state to receive service of any lawful process in any judicial or administrative noncriminal suit, action, or proceeding against the licensed mortgage broker which arises under this chapter or any rule or order under this chapter, with the same force and validity as if served personally on the licensed mortgage broker. Service upon the registered agent shall not be effective unless the plaintiff, who may be the director in a suit, action,

or proceeding instituted by him or her, no later than the next business day sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director. In any judicial action, suit, or proceeding arising under this chapter or any rule or order adopted under this chapter between the department or director and a licensed mortgage broker who does not maintain a physical office in this state, venue shall be exclusively in the superior court of ~~((the {of}))~~ Thurston county.

EXPLANATORY NOTE

Corrects a manifest grammatical error.

Sec. 75. RCW 19.166.090 and 1991 c 128 s 9 are each amended to read as follows:

Any person who violates any provision of this chapter or who willfully and knowingly gives false or incorrect information to the secretary ~~((of state))~~ of state, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW.

EXPLANATORY NOTE

Clarifies that the reference is to the secretary of state.

Sec. 76. RCW 19.174.020 and 1993 c 324 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) "Access area" means a paved walkway or sidewalk that is within fifty feet of an automated teller machine or night deposit facility. "Access area" does not include publicly maintained sidewalks or roads.

(2) "Access device" means:

(a) "Access device" as defined in federal reserve board Regulation E, 12 C.F.R. Part 205, promulgated under the Electronic Fund Transfer Act, 15 U.S.C. Sec. 1601, et seq.; or

(b) A key or other mechanism issued by a banking institution to its customer to give the customer access to the banking institution's night deposit facility.

(3) "Automated teller machine" means an electronic information processing device located in this state that accepts or dispenses cash in connection with a credit, deposit, or convenience account. ~~((Automatic {automated}))~~ "Automated teller machine" does not include a device used primarily to facilitate check guarantees or check authorizations, used in connection with the acceptance or dispensing of cash on a person-to-person basis such as by a store cashier, or used for payment of goods and services.

(4) "Banking institution" means a state or federally chartered bank, trust company, savings bank, savings and loan association, and credit union.

(5) "Candle-foot power" means a light intensity of candles on a horizontal plane at thirty-six inches above ground level and five feet in front of the area to be measured.

(6) "Control of an access area or defined parking area" means to have the present authority to determine how, when, and by whom it is to be used, and how it is to be maintained, lighted, and landscaped.

(7) "Defined parking area" means that portion of a parking area open for customer parking that is:

(a) Contiguous to an access area with respect to an automated teller machine or night deposit facility;

(b) Regularly, principally, and lawfully used for parking by users of the automated teller machine or night deposit facility while conducting transactions during hours of darkness; and

(c) Owned or leased by the operator of the automated teller machine or night deposit facility or owned or controlled by the party leasing the automated teller machine or night deposit facility site to the operator. "Defined parking area" does not include a parking area that is not open or regularly used for parking by users of the automated teller machine or night deposit facility who are conducting transactions during hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of this subsection (7)(c) and would therefore otherwise be a defined parking area, only the single parking level deemed by the operator of the automated teller machine and night deposit facility to be the most directly accessible to the users of the automated teller machine and night deposit facility is a defined parking area.

(8) "Hours of darkness" means the period that commences thirty minutes after sunset and ends thirty minutes before sunrise.

(9) "Night deposit facility" means a receptacle that is provided by a banking institution for the use of its customers in delivering cash, checks, and other items to the banking institution.

(10) "Operator" means a banking institution or other business entity or a person who operates an automated teller machine or night deposit facility.

EXPLANATORY NOTE

Corrects a manifest drafting error.

NEW SECTION. Sec. 77. The following acts or parts of acts are each repealed:

(1) RCW 18.08.150 (Application for examination—Fee) and 1985 c 7 s 5;

(2) RCW 18.08.190 (Expiration of certificate—Renewal—Fee—Withdrawal of registrant) and 1985 c 7 s 6;

(3) RCW 18.08.220 (Reinstatement of certificate—Replacement of lost or destroyed certificate, charge) and 1985 c 7 s 7;

(4) RCW 18.25.050 (Revocation or refusal of licenses—Hearing—Restoration) and 1985 c 7 s 16;

- (5) RCW 18.32.326 (Identification of dental prostheses—Technical assistance);
- (6) RCW 18.45.010 (Definitions) and 1979 c 141 s 27;
- (7) RCW 18.45.020 (Administration of chapter) and 1979 c 141 s 28;
- (8) RCW 18.45.440 (Inspection of premises, records, materials—Powers of secretary) and 1979 c 141 s 29;
- (9) RCW 18.45.450 (Condemnation of articles, materials—Grounds—Disposition) and 1979 c 141 s 30;
- (10) RCW 18.45.470 (Condemned articles—Failure to relinquish—Penalty) and 1979 c 141 s 31; and
- (11) RCW 18.90.010 (Definitions) and 1979 c 158 s 70.

EXPLANATORY NOTE

RCW 18.08.150 was amended by 1985 c 7 s 5 without reference to its repeal by 1985 c 37 s 18. Repealing this section removes the decodified section from the code.

RCW 18.08.190 was amended by 1985 c 7 s 6 without reference to its repeal by 1985 c 37 s 18. Repealing this section removes the decodified section from the code.

RCW 18.08.220 was amended by 1985 c 7 s 7 without reference to its repeal by 1985 c 37 s 18. Repealing this section removes the decodified section from the code.

RCW 18.25.050 was amended by 1985 c 7 s 16 without reference to its repeal by 1986 c 259 s 27. Repealing this section removes the decodified section from the code.

RCW 18.32.326 was both recodified and repealed during the 1989 legislative sessions, each without reference to the other. Repealing this section removes the decodified section from the code.

RCW 18.45.010 was amended by 1979 c 141 s 27 without reference to its repeal by 1979 c 99 s 1, effective June 30, 1982. Repealing this section removes the decodified section from the code.

RCW 18.45.020 was amended by 1979 c 141 s 28 without reference to its repeal by 1979 c 99 s 51, effective June 30, 1982. Repealing this section removes the decodified section from the code.

RCW 18.45.440 was amended by 1979 c 141 s 29 without reference to its repeal by 1979 c 99 s 51, effective June 30, 1982. Repealing this section removes the decodified section from the code.

RCW 18.45.450 was amended by 1979 c 141 s 30 without reference to its repeal by 1979 c 99 s 51, effective June 30, 1982. Repealing this section removes the decodified section from the code.

RCW 18.45.470 was amended by 1979 c 141 s 31 without reference to its repeal by 1979 c 99 s 51, effective June 30, 1982. Repealing this section removes the decodified section from the code.

RCW 18.90.010 was amended by 1979 c 158 s 70 without reference to its repeal by 1979 c 99 s 60, effective June 30, 1982. Repealing this section removes the decodified section from the code.

Passed the House March 8, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 172

[Substitute House Bill 2633]

STRUCTURAL ENGINEERS

AN ACT Relating to registration of structural engineers; and amending RCW 18.43.040.

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

Sec. 1. RCW 18.43.040 and 1995 c 356 s 2 are each amended to read as follows:

The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, respectively:

As a professional engineer: A specific record of eight years or more of experience in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering; and successfully passing a written or oral examination, or both, in engineering as prescribed by the board.

Graduation in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing shall be considered equivalent to four years of such required experience. The satisfactory completion of each year of such an approved engineering course without graduation shall be considered as equivalent to a year of such required experience. Graduation in a curriculum other than engineering from a school or college approved by the board shall be considered as equivalent to two years of such required experience: PROVIDED, That no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications. The board may, at its discretion, give credit as experience not in excess of one year, for satisfactory postgraduate study in engineering.

Structural engineering is recognized as a specialized branch of professional engineering. To receive a certificate of registration in structural engineering, an applicant must hold a current registration in this state in engineering and have at least two years of structural engineering experience, of a character satisfactory to

the board, in addition to the eight years' experience required for registration as a professional engineer. An applicant for registration as a structural engineer must also pass an additional examination as prescribed by the board. Applicants for a certificate of registration in structural engineering who have had their application approved by the board prior to July 1, 2001, are not required to have an additional two years of structural engineering experience if the applicant passes the additional structural examination before January 30, 2002.

As an engineer-in-training: An applicant for registration as a professional engineer shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as an engineer-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required engineering experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of engineering subjects, including mathematics and the basic sciences.

At any time after the completion of the required eight years of engineering experience, as defined in this section, the applicant may take the second stage of the examination upon submission of an application for registration and payment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of his or her greater experience, to apply his or her knowledge and experience in the field of his or her specific training and qualifications.

As a professional land surveyor: A specific record of eight years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written or oral examination, or both, in surveying as prescribed by the board.

Graduation from a school or college approved by the board as of satisfactory standing, including the completion of an approved course in surveying, shall be considered equivalent to four years of the required experience. Postgraduate college courses approved by the board shall be considered for up to one additional year of the required experience.

As a land-surveyor-in-training: An applicant for registration as a professional land surveyor shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as a land-surveyor-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required land surveying experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate

fundamentals of land surveying subjects, including mathematics and the basic sciences.

At any time after the completion of the required eight years of land surveying experience, as defined in this section, the applicant may take the second stage of the examination upon submission of an application for registration and payment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of greater experience, to apply knowledge and experience in the field of land surveying.

The first stage shall be successfully completed before the second stage may be attempted. Applicants who have been approved by the board to take the examination based on the requirement for six years of experience under this section before July 1, 1996, are eligible to sit for the examination.

No person shall be eligible for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, who is not of good character and reputation.

Teaching, of a character satisfactory to the board shall be considered as experience not in excess of two years for the appropriate profession.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be practice of engineering.

Any person having the necessary qualifications prescribed in this chapter to entitle him or her to registration shall be eligible for such registration although the person may not be practicing his or her profession at the time of making his or her application.

Passed the House February 8, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 173

[House Bill 2516]

SUCCESSOR TAX LIABILITY—DISCLOSURE

AN ACT Relating to the disclosure of information to persons against whom successor tax liability is asserted; amending RCW 82.32.330; and providing an effective date.

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

Sec. 1. RCW 82.32.330 and 1998 c 234 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;

(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 other person may disclose any return or tax information.

(3) The foregoing, however, shall not prohibit the department of revenue 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 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 a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receive the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) 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;

(j) 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;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) 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;

(m) 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; ~~((or))~~

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;
or

(o) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded.

(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), (i), (j), or (n) 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, is guilty of a misdemeanor. 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 takes effect July 1, 2000.

Passed the House February 8, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 174

[House Bill 2576]

TRADE NAME REGISTRATIONS

AN ACT Relating to trade name registrations; and amending RCW 19.80.005, 19.80.010, and 19.80.025.

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

Sec. 1. RCW 19.80.005 and 1996 c 231 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) "Trade name" means a word or name, or any combination of a word or name, used by a person to identify the person's business which:

(a) Is not, or does not include, the true and real name of all persons conducting the business; or

(b) Includes words which suggest additional parties of interest such as "company," "and sons," or "and associates."

(2) "Business" means an occupation, profession, or employment engaged in for the purpose of seeking a profit.

~~(3) ("Executed" by a person means that a document signed by such person is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the person submitting the document to the department of licensing.~~

~~(4))~~ "Person" means any individual, partnership, limited liability company, or corporation conducting or having an interest in a business in the state.

~~((5))~~ (4) "True and real name" means:

(a) The surname of an individual coupled with one or more of the individual's other names, one or more of the individual's initials, or any combination;

(b) The designation or appellation by which an individual is best known and called in the business community where that individual transacts business, if this is used as that individual's legal signature;

(c) The registered corporate name of a domestic corporation as filed with the secretary of state;

(d) The registered corporate name of a foreign corporation authorized to do business within the state of Washington as filed with the secretary of state;

(e) The registered partnership name of a domestic limited partnership as filed with the secretary of state;

(f) The registered partnership name of a foreign limited partnership as filed with the secretary of state; or

(g) The name of a general partnership which includes in its name the true and real names, as defined in (a) through (f) of this subsection, of each general partner as required in RCW 19.80.010.

Sec. 2. RCW 19.80.010 and 1996 c 231 s 3 are each amended to read as follows:

Each person or persons who shall carry on, conduct, or transact business in this state under any trade name shall register that trade name with the department of licensing as set forth in this section:

(1) Sole proprietorship or general partnership: The registration shall set forth the true and real name or names of each person conducting the same, together with the post office address or addresses of each such person and the name of the general partnership, if applicable.

(2) Foreign or domestic limited partnership: The registration shall set forth the limited partnership name as filed with the office of the secretary of state.

(3) Foreign or domestic limited liability company: The registration shall set forth the limited liability company name as filed with the office of the secretary of state.

(4) Foreign or domestic corporation: The registration shall set forth the corporate name as filed with the office of the secretary of state.

~~((5) The registration shall be executed by:~~

~~(a) The sole proprietor of a sole proprietorship;~~

~~(b) A general partner of a domestic or foreign general or limited partnership;~~
or

~~(c) An officer of a domestic or foreign corporation.)~~

Sec. 3. RCW 19.80.025 and 1984 c 130 s 5 are each amended to read as follows:

(1) ~~((An executed amendment))~~ A notice of change shall be filed with the department of licensing when a change occurs in:

(a) The true and real name of a person conducting a business with a trade name registered under this chapter; or

(b) Any mailing address set forth on the registration or any subsequently filed ~~((amendment))~~ notice of change.

(2) A notice of cancellation shall be filed with the department when use of a trade name is discontinued.

(3) A notice of cancellation, together with a new registration, shall be filed before conducting or transacting any business when:

(a) An addition, deletion, or any change of person or persons conducting business under the registered trade name occurs; or

(b) There is a change in the wording or spelling of the trade name since initial registration or renewal.

Passed the House February 8, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 175

[House Bill 2510]

IN-HOME SERVICES

AN ACT Relating to in-home services; amending RCW 70.127.010, 70.127.020, 70.127.030, 70.127.040, 70.127.050, 70.127.080, 70.127.085, 70.127.090, 70.127.100, 70.127.120, 70.127.125, 70.127.140, 70.127.150, 70.127.170, 70.127.180, 70.127.190, 70.127.200, 70.127.210, and 70.38.025; adding new sections to chapter 70.127 RCW; adding a new section to chapter 70.38 RCW; repealing RCW 70.127.060, 70.127.070, 70.127.110, 70.127.220, 70.127.230, 70.127.240, 70.127.250, 70.127.260, and 70.127.270; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 70.127.010 and 1999 c 190 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) "Administrator" means an individual responsible for managing the operation of an agency.

(2) "Department" means the department of health.

~~((2))~~ (3) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided in home health and hospice agencies.

(4) "Family" means individuals who are important to, and designated by, the patient or client and who need not be relatives.

~~(5)~~ "Home care agency" means a ~~((private or public agency or organization that administers or provides))~~ person administering or providing home care services directly or through a contract arrangement to ~~((ill, disabled, or infirm persons))~~ individuals in places of temporary or permanent residence.

~~((3))~~ (6) "Home care services" means ((personal care services, homemaker services, respite care services, or any other)) nonmedical services and assistance provided to ill, disabled, ((or)) infirm ((persons which services enable these persons to remain in their own residences consistent with their desires, abilities, and safety)), or vulnerable individuals that enable them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services.

~~((4))~~ (7) "Home health agency" means a ((private or public agency or organization that administers or provides home health aide services or)) person administering or providing two or more home health services directly or through a contract arrangement to ((ill, disabled, or infirm persons)) individuals in places of temporary or permanent residence. ~~((A private or public agency or organization that administers or provides))~~ A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

~~((5))~~ (8) "Home health services" means ((health or medical)) services provided to ill, disabled, ((or)) infirm ((persons)), or vulnerable individuals. These

services (~~may be of an acute or maintenance care nature, and~~) include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

~~((6))~~ (9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

~~((7))~~ "Homemaker services" means services that assist ill, disabled, or infirm persons with household tasks essential to achieving adequate household and family management.

~~(8))~~ (10) "Home medical supplies" or "equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(11) "Hospice agency" means a (~~private or public agency or organization~~) person administering or providing hospice (~~care~~) services directly or through a contract arrangement to (~~terminally ill persons~~) individuals in places of temporary or permanent residence (~~by using~~) under the direction of an interdisciplinary team composed of at least (~~nursing~~) a nurse, social (~~work~~) worker, physician, (~~and pastoral or~~) spiritual (~~counseling~~) counselor, and a volunteer.

~~((9))~~ (12) "Hospice care center" means a homelike, noninstitutional facility where hospice services are provided, and that meets the requirements for operation under section 21 of this act.

(13) "Hospice (~~care~~) services" means (~~(a) Palliative care~~) symptom and pain management provided to a terminally ill (~~person~~) individual, and emotional, spiritual, and bereavement support for the individual and family in a place of temporary or permanent residence (~~(that alleviates physical symptoms, including pain, as well as alleviates the emotional and spiritual discomfort associated with dying; and (b) bereavement care provided to the family of a terminally ill person that alleviates the emotional and spiritual discomfort associated with the death of a family member. Hospice care)~~), and may include the provision of home health and (medical services and personal care, respite, or homemaker services. Family means individuals who are important to and designated by the patient, and who need not be relatives.

~~(10)~~ "Ill, disabled, or infirm persons" means persons who need home health, hospice, or home care services in order to maintain themselves in their places of temporary or permanent residence.

~~(11)~~ "Personal care services" means services that assist ill, disabled, or infirm persons with dressing, feeding, and personal hygiene to facilitate self-care.

~~—(12) "Public or private agency or organization" means an entity that employs or contracts with two or more persons who provide care in the home.~~

~~—(13) "Respite care services" means services that assist or support the primary care giver on a scheduled basis))~~ home care services for the terminally ill individual.

(14) "In-home services agency" means a person licensed to administer or provide home health, home care, hospice services, or hospice care center services directly or through a contract arrangement to individuals in a place of temporary or permanent residence.

(15) "Person" means any individual, business, firm, partnership, corporation, company, association, joint stock association, public or private agency or organization, or the legal successor thereof that employs or contracts with two or more individuals.

(16) "Plan of care" means a written document based on assessment of individual needs that identifies services to meet these needs.

(17) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

(18) "Service area" means the geographic area in which the department has given prior approval to a licensee to provide home health, hospice, or home care services.

(19) "Survey" means an inspection conducted by the department to evaluate and monitor an agency's compliance with this chapter.

Sec. 2. RCW 70.127.020 and 1988 c 245 s 3 are each amended to read as follows:

(1) ~~After July 1, 1990, ((no private or public agency or organization may))~~ a license is required for a person to advertise, operate, manage, conduct, open, or maintain ((a home health agency without first obtaining a home health agency license from the department)) an in-home services agency.

(2) ~~((After July 1, 1990, no private or public agency or organization may advertise, operate, manage, conduct, open, or maintain a hospice agency without first obtaining a hospice agency license from the department.~~

~~—(3) After July 1, 1990, no public or private agency or organization may advertise, operate, manage, conduct, open, or maintain a home care agency without first obtaining a home care agency license from the department:))~~ An in-home services agency license is required for a nursing home, hospital, or other person that functions as a home health, hospice, hospice care center, or home care agency.

Sec. 3. RCW 70.127.030 and 1988 c 245 s 4 are each amended to read as follows:

It is unlawful for any person to use the words:

(1) ~~((No person may use the words))~~ "Home health agency," "home health care services," ((or)) "visiting nurse services," "home health," or "home health services." in its corporate or business name, or advertise using such words unless

licensed ~~((as a home health agency))~~ to provide those services under this chapter~~((:));~~

(2) ~~((No person may use the words))~~ "Hospice agency," ~~((or))~~ "hospice," "hospice services," "hospice care," or "hospice care center" in its corporate or business name, or advertise using such words unless licensed ~~((as a hospice agency))~~ to provide those services under this chapter~~((:));~~

(3) ~~((No person may use the words))~~ "Home care agency," ~~((or))~~ "home care services," or "home care" in its corporate or business name, or advertise using such words unless licensed ~~((as a home care agency))~~ to provide those services under this chapter~~((:));~~ or

(4) "In-home services agency," "in-home services," or any similar term to indicate that a person is a home health, home care, hospice care center, or hospice agency in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter.

Sec. 4. RCW 70.127.040 and 1993 c 42 s 2 are each amended to read as follows:

The following are not subject to regulation for the purposes of this chapter:

(1) A family member providing home health, hospice, or home care services;

(2) ~~((An organization that))~~ A person who provides only meal services in ((a person's)) an individual's permanent or temporary residence;

(3) ~~((Entities))~~ An individual providing home care through a direct agreement with a recipient of care in an individual's permanent or temporary residence;

(4) A person furnishing ((durable)) or delivering home medical supplies or equipment that does not involve the ((delivery)) provision of ((professional)) services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use;

~~((4))~~ (5) A person who provides services through a contract with a licensed agency;

~~((5))~~ (6) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

~~((6))~~ (7) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, adult family homes under chapter 70.128 RCW, boarding homes under chapter 18.20 RCW, developmental disability residential programs under chapter 71.12 RCW, other entities licensed under chapter 71.12 RCW, or other licensed facilities and institutions, only when providing services to persons residing within the facility or institution ((if the delivery of the services is regulated by the state;

~~((7) Persons));~~

(8) Local and combined city-county health departments providing services under chapters 70.05 and 70.08 RCW;

(9) An individual providing care to ill, disabled ((persons)), infirm, or vulnerable individuals through a contract with the department of social and health services;

~~((8))~~ (10) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

~~((9))~~ (11) In-home assessments of an ill, disabled, vulnerable, or infirm ~~((person's ability to adapt to the home environment))~~ individual that does not result in regular ongoing care at home;

~~((10))~~ (12) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents;

~~((11))~~ (13) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

~~((12))~~ (14) A person providing case management services ((which do not include the direct delivery of home health, hospice, or home care services)). For the purposes of this subsection, "case management" means the assessment, coordination, authorization, planning, training, and monitoring of home health, hospice, and home care, and does not include the direct provision of care to an individual;

~~((13))~~ (15) Pharmacies licensed under RCW 18.64.043 that deliver prescription drugs and durable medical equipment that does not involve the use of professional services beyond those authorized to be performed by licensed pharmacists pursuant to chapter 18.64 RCW and those necessary to set up and monitor the proper functioning of the equipment and educate the person on its proper use;

(16) A volunteer hospice complying with the requirements of RCW 70.127.050; and

(17) A person who provides home care services without compensation.

Sec. 5. RCW 70.127.050 and 1993 c 42 s 3 are each amended to read as follows:

(1) An entity that provides hospice care without receiving compensation for delivery of any of its services is exempt from licensure pursuant to RCW 70.127.020~~((2))~~ (1) if it notifies the department, on forms provided by the department, of its name, address, name of owner, and a statement affirming that it provides hospice care without receiving compensation for delivery of any of its services. This form must be filed with the department ~~((within sixty days after June 30, 1993, or))~~ within sixty days after being informed in writing by the department of this requirement for obtaining exemption from licensure under this chapter.

(2) For the purposes of this section, it is not relevant if the entity compensates its staff. For the purposes of this section, the word "compensation" does not include donations.

(3) Notwithstanding the provisions of RCW 70.127.030(2), an entity that provides hospice care without receiving compensation for delivery of any of its services is allowed to use the phrase "volunteer hospice."

(4) Nothing in this chapter precludes an entity providing hospice care without receiving compensation for delivery of any of its services from obtaining a hospice license if it so chooses, but that entity would be exempt from the requirements set forth in RCW 70.127.080(1)(d) ~~((and (e)))~~.

Sec. 6. RCW 70.127.080 and 1999 c 190 s 2 are each amended to read as follows:

(1) An applicant for ~~((a home health, hospice, or home care))~~ an in-home services agency license shall:

(a) File a written application on a form provided by the department;

(b) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(c) Cooperate with on-site ~~((review))~~ survey conducted by the department ~~((prior to licensure or renewal))~~ except as provided in RCW 70.127.085;

(d) Provide evidence of and maintain professional liability, public liability, and property damage insurance ~~((in the amount of one hundred thousand dollars per occurrence or adequate self-insurance as approved by the department))~~ in an amount established by the department, based on industry standards. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(e) ~~((Provide evidence of and maintain public liability and property damage insurance coverage in the sum of fifty thousand dollars for injury or damage to property per occurrence and fifty thousand dollars for injury or damage, including death, to any one person and one hundred thousand dollars for injury or damage, including death, to more than one person, or evidence of adequate self-insurance for public liability and property damage as approved by the department. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;~~

~~—(f))~~ Provide ~~((such proof as the department may require concerning))~~ documentation of an organizational structure, and the identity of the applicant, officers, administrator, directors of clinical services, partners, managing employees, or owners of ten percent or more of the applicant's assets;

~~((g))~~ (f) File with the department for approval a description of the service area in which the applicant will operate and a description of how the applicant intends to provide management and supervision of services throughout the service area. The department shall adopt rules necessary to establish criteria for approval that are related to appropriate management and supervision of services throughout the service area. In developing the rules, the department may not establish criteria that:

(i) Limit the number or type of agencies in any service area; or

(ii) Limit the number of persons any agency may serve within its service area unless the criteria are related to the need for trained and available staff to provide services within the service area;

~~((H))~~ (g) File with the department a list of the home health, hospice, and home care services ~~((ffered))~~ provided directly and under contract;

~~((H))~~ (h) Pay to the department a license fee as provided in RCW 70.127.090; ~~((and~~

~~—(j))~~ (i) Comply with RCW 43.43.830 through 43.43.842 for criminal background checks; and

(j) Provide any other information that the department may reasonably require.

(2) A certificate of need under chapter 70.38 RCW is not required for licensure except for the operation of a hospice care center.

~~((3) A license or renewal shall not be granted pursuant to this chapter if the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets, within the last five years have been found in a civil or criminal proceeding to have committed any act which reasonably relates to the person's fitness to establish, maintain, or administer an agency or to provide care in the home of another.))~~

Sec. 7. RCW 70.127.085 and 1993 c 42 s 11 are each amended to read as follows:

(1) Notwithstanding the provisions of RCW 70.127.080(1)(c), ~~((a home health or hospice agency))~~ an in-home services agency that is certified by the federal medicare program, or accredited by the community health accreditation program, or the joint commission on accreditation of health care organizations as a home health or hospice agency ~~((shall be granted the applicable renewal license, without necessity of))~~ is not subject to a state licensure ~~((on-site))~~ survey if:

(a) The department determines that the applicable survey standards of the certification or accreditation program are substantially equivalent to those required by this chapter;

(b) An on-site survey has been conducted for the purposes of certification or accreditation during the previous twenty-four months; and

(c) The department receives directly from the certifying or accrediting entity or from the licensee applicant copies of the initial and subsequent survey reports and other relevant reports or findings that indicate compliance with licensure requirements.

(2) Notwithstanding the provisions of RCW 70.127.080(1)(c), ~~((a home care agency))~~ an in-home services agency providing services under contract with the department of social and health services or area agency on aging to provide home care services and that is monitored by the department of social and health services or area agency on aging ~~((shall be granted a renewal license, without necessity of an on-site))~~ is not subject to a state licensure survey by the department of health if:

(a) The department determines that the department of social and health services or an area agency on aging monitoring standards are substantially equivalent to those required by this chapter;

(b) An on-site monitoring has been conducted by the department of social and health services or an area agency on aging during the previous twenty-four months;

(c) The department of social and health services or an area agency on aging includes in its monitoring a sample of private pay clients, if applicable; and

(d) The department receives directly from the department of social and health services copies of monitoring reports and other relevant reports or findings that indicate compliance with licensure requirements.

(3) The department retains authority to survey those services areas not addressed by the national accrediting body, department of social and health services, or an area agency on aging.

(4) In reviewing the federal, the joint commission on accreditation of health care organizations, the community health accreditation program, or the department of social and health services survey standards for substantial equivalency to those set forth in this chapter, the department is directed to provide the most liberal interpretation consistent with the intent of this chapter. In the event the department determines at any time that the survey standards are not substantially equivalent to those required by this chapter, the department is directed to notify the affected licensees. The notification shall contain a detailed description of the deficiencies in the alternative survey process, as well as an explanation concerning the risk to the consumer. The determination of substantial equivalency for alternative survey process and lack of substantial equivalency are agency actions and subject to RCW 34.05.210 through 34.05.395 and 34.05.510 through ((34.05.680)) 34.05.675.

~~((4) Agencies receiving a license without necessity of an on-site survey by the department under this chapter shall pay the same licensure or transfer fee as other agencies in their licensure category. It is the intent of this section that the licensure fees for all agencies will be lowered by the elimination of the duplication that currently exists.))~~

~~(5) ((In order to avoid unnecessary costs,)) The department is ((not)) authorized to perform a validation survey ((if it is also the agency performing the certification or accreditation survey. Where this is not the case,)) on in-home services agencies who previously received a survey through accreditation or contracts with the department of social and health services or an area agency on aging under subsection (2) of this section. The department is authorized to perform a validation survey on no greater than ((five)) ten percent of each type of certification or accreditation survey.~~

(6) This section does not affect the department's enforcement authority for licensed agencies.

Sec. 8. RCW 70.127.090 and 1999 c 190 s 3 are each amended to read as follows:

(1) Application and renewal fee: An application for a license or any renewal shall be accompanied by a fee as established by the department under RCW 43.70.250. The department shall adopt by rule licensure fees based on a sliding scale using such factors as the number of agency full-time equivalents, geographic area served, number of locations, or type and volume of services provided. For agencies receiving a licensure survey that requires more than two on-site ~~((reviews))~~ surveys by the department per licensure period, an additional fee as determined by the department by rule shall be charged for each additional on-site ~~((review))~~ survey. ~~((The department shall charge a reasonable fee for processing changes in ownership.))~~ The department may set different licensure fees for each licensure category. Agencies receiving a license without necessity of an on-site survey by the department under this chapter shall pay the same licensure or transfer fee as other agencies in their licensure category.

(2) Change of ownership fee: The department shall charge a reasonable fee for processing changes in ownership. The fee for transfer of ownership may not exceed fifty percent of the base licensure fee.

(3) Late fee: The department may establish a late fee for failure to apply for licensure or renewal as required by this chapter.

Sec. 9. RCW 70.127.100 and 1993 c 42 s 6 are each amended to read as follows:

Upon receipt of an application under RCW 70.127.080 for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. A license issued under this chapter shall not be transferred or assigned without thirty days prior notice to the department and the department's approval. A license, unless suspended or revoked, is effective for a period of two years, however an initial license is only effective for twelve months. The department shall conduct ~~((an on-site review))~~ a survey within each licensure period~~((The department))~~ and may conduct a licensure survey after ownership transfer. ~~((The fee for this survey may not exceed fifty percent of the base licensure fee. The department may establish penalty fees for failure to apply for licensure or renewal as required by this chapter.))~~

Sec. 10. RCW 70.127.120 and 1993 c 42 s 8 are each amended to read as follows:

The department shall adopt rules consistent with RCW 70.127.005 necessary to implement this chapter under chapter 34.05 RCW. In order to ensure safe and adequate care, the rules shall address at a minimum the following:

(1) Maintenance and preservation of all records relating directly to the care and treatment of ~~((persons))~~ individuals by licensees;

(2) Establishment and implementation of a procedure for the receipt, investigation, and disposition of complaints ~~((by the department))~~ regarding services provided ~~((by licensees))~~;

(3) Establishment and implementation of a plan for ~~((on-going))~~ ongoing care of ~~((persons))~~ individuals and preservation of records if the licensee ceases operations;

(4) Supervision of services;

(5) ~~((Maintenance))~~ Establishment and implementation of written policies regarding response to referrals and access to services ~~((at all times))~~;

(6) ~~((Maintenance))~~ Establishment and implementation of written personnel policies ~~((and))~~, procedures and personnel records for paid staff that provide for ~~((rehire))~~ prehire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality ~~((assurance))~~ improvement activities. The department may not establish experience or other qualifications for agency personnel or contractors beyond that required by state law;

(7) ~~((Maintenance))~~ Establishment and implementation of written policies and procedures for volunteers ~~((that))~~ who have direct patient/client contact and that provide for background and health screening, orientation, and supervision; ~~((and))~~

(8) ~~((Maintenance))~~ Establishment and implementation of written policies ~~((on))~~ for obtaining regular reports on patient satisfaction;

(9) Establishment and implementation of a quality improvement process; and

(10) Establishment and implementation of policies related to the delivery of care including:

(a) Plan of care for each individual served;

(b) Periodic review of the plan of care;

(c) Supervision of care and clinical consultation as necessary;

(d) Care consistent with the plan;

(e) Admission, transfer, and discharge from care; and

(f) For hospice services:

(i) Availability of twenty-four hour seven days a week hospice registered nurse consultation and in-home services as appropriate;

(ii) Interdisciplinary team communication as appropriate and necessary; and

(iii) The use and availability of volunteers to provide family support and respite care.

Sec. 11. RCW 70.127.125 and 1993 c 42 s 7 are each amended to read as follows:

The department is directed to continue to develop, with opportunity for comment from licensees, interpretive guidelines that are specific to each type of ~~((license))~~ service and consistent with legislative intent.

Sec. 12. RCW 70.127.140 and 1988 c 245 s 15 are each amended to read as follows:

(1) ~~((A licensee))~~ An in-home services agency shall provide each ~~((person))~~ individual or designated representative with a written bill of rights affirming each ~~((person's))~~ individual's right to:

- (a) A listing of the in-home services offered by the in-home services agency and those being provided;
- (b) The name of the ~~((person))~~ individual supervising the care and the manner in which that ~~((person))~~ individual may be contacted;
- (c) A description of the process for submitting and addressing complaints;
- (d) Submit complaints without retaliation and to have the complaint addressed by the agency;
- ~~(e)~~ Be informed of the state complaint hotline number;
- ~~(f)~~ A statement advising the ~~((person))~~ individual or representative of the right to ~~((participate))~~ ongoing participation in the development of the plan of care;
- ~~((e))~~ (g) A statement providing that the ~~((person))~~ individual or representative is entitled to information regarding access to the department's ~~((registry))~~ listing of providers and to select any licensee to provide care, subject to the ~~((patient's))~~ individual's reimbursement mechanism or other relevant contractual obligations;
- ~~((f))~~ (h) Be treated with courtesy, respect, privacy, and freedom from abuse and discrimination;
- ~~((g))~~ (i) Refuse treatment or services;
- ~~((h) Have patient records be confidential; and~~
~~(i) Have))~~ (j) Have property treated with respect;
- (k) Privacy of personal information and confidentiality of health care records;
- (l) Be cared for by properly trained staff ~~((and))~~ with coordination of services;
- (m) A fully itemized billing statement upon request, including the date of each service and the charge. Licensees providing services through a managed care plan shall not be required to provide itemized billing statements; and
- (n) Be informed about advanced directives and the agency's responsibility to implement them.
- ~~(2) ((Upon request, a licensee shall provide each person or designated representative with a fully itemized billing statement at least monthly, including the date of each service and the charge. Licensees providing services through a managed care plan shall not be required to provide itemized billing statements.))~~
An in-home services agency shall ensure rights under this section are implemented and updated as appropriate.

Sec. 13. RCW 70.127.150 and 1988 c 245 s 16 are each amended to read as follows:

No licensee, contractee, or employee may hold a durable power of attorney on behalf of any ~~((person))~~ individual who is receiving care from the licensee.

Sec. 14. RCW 70.127.170 and 1988 c 245 s 18 are each amended to read as follows:

Pursuant to chapter 34.05 RCW and RCW 70.127.180(3), the department may deny, restrict, condition, modify, suspend, or revoke a license under this chapter or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, or require a refund of any

amounts billed to, and collected from, the consumer or third-party payor in any case in which it finds that the licensee, or any applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or licensee's assets:

(1) Failed or refused to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Was the holder of a license issued pursuant to this chapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled and the licensee has continued to operate;

(3) Has knowingly or with reason to know made a misrepresentation of, false statement of, or failed to disclose, a material fact to the department in ((the)) an application for the license or any data attached thereto or in any record required by this chapter or matter under investigation by the department, or during a survey, or concerning information requested by the department;

(4) Refused to allow representatives of the department to inspect any book, record, or file required by this chapter to be maintained or any portion of the licensee's premises;

(5) Willfully prevented, interfered with, or attempted to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter. This includes but is not limited to: Willful misrepresentation of facts during a survey, investigation, or administrative proceeding or any other legal action; or use of threats or harassment against any patient, client, or witness, or use of financial inducements to any patient, client, or witness to prevent or attempt to prevent him or her from providing evidence during a survey or investigation, in an administrative proceeding, or any other legal action involving the department;

(6) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of this chapter or the rules adopted under this chapter;

(7) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after the assessment becomes final;

(8) Used advertising that is false, fraudulent, or misleading;

(9) Has repeated incidents of personnel performing services beyond their authorized scope of practice; ((or))

(10) Misrepresented or was fraudulent in any aspect of the conduct of the licensee's business;

(11) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an agency or to provide care in the home of another;

(12) Was the holder of a license to provide care or treatment to ill, disabled, infirm, or vulnerable individuals that was denied, restricted, not renewed,

surrendered, suspended, or revoked by a competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the denial, restriction, nonrenewal, surrender, suspension, or revocation;

(13) Violated any state or federal statute, or administrative rule regulating the operation of the agency;

(14) Failed to comply with an order issued by the secretary or designee;

(15) Aided or abetted the unlicensed operation of an in-home services agency;

(16) Operated beyond the scope of the in-home services agency license;

(17) Failed to adequately supervise staff to the extent that the health or safety of a patient or client was at risk;

(18) Compromised the health or safety of a patient or client, including, but not limited to, the individual performing services beyond their authorized scope of practice;

(19) Continued to operate after license revocation, suspension, or expiration, or operating outside the parameters of a modified, conditioned, or restricted license;

(20) Failed or refused to comply with chapter 70.02 RCW;

(21) Abused, neglected, abandoned, or financially exploited a patient or client as these terms are defined in RCW 74.34.020;

(22) Misappropriated the property of an individual;

(23) Is unqualified or unable to operate or direct the operation of the agency according to this chapter and the rules adopted under this chapter;

(24) Obtained or attempted to obtain a license by fraudulent means or misrepresentation; or

(25) Failed to report abuse or neglect of a patient or client in violation of chapter 74.34 RCW.

Sec. 15. RCW 70.127.180 and 1988 c 245 s 19 are each amended to read as follows:

(1) The department may at any time conduct ((an on-site review)) a survey of all records and operations of a licensee ((or conduct in-home visits)) in order to determine compliance with this chapter. The department may ((also examine and audit records necessary to determine compliance with this chapter)) conduct in-home visits to observe patient/client care and services. The right to conduct ((an on-site review and audit and examination of records)) a survey shall extend to any premises and records of persons whom the department has reason to believe are providing home health, hospice, or home care services without a license.

(2) Following ((an on-site review, in-home visit, or audit)) a survey, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the reasons for noncompliance ((and inform the licensee that it must comply within a specified reasonable time, not to exceed sixty days. If the licensee fails to comply, the licensee is subject to disciplinary action under RCW 70.127.170)).

(3) The licensee may be subject to formal enforcement action under RCW 70.127.170 if the department determines: (a) The licensee has previously been subject to a formal enforcement action for the same or similar type of violation of the same statute or rule, or has been given previous notice of the same or similar type of violation of the same statute or rule; (b) the licensee failed to achieve compliance with a statute, rule, or order by the date established in a previously issued notice or order; (c) the violation resulted in actual serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals; or (d) the violation has a potential for serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals.

Sec. 16. RCW 70.127.190 and 1988 c 245 s 20 are each amended to read as follows:

All information received by the department through filed reports, ~~((audits, on-site reviews,))~~ surveys, and in-home visits~~((, or as otherwise authorized))~~ conducted under this chapter shall not be disclosed publicly in any manner that would identify ~~((persons))~~ individuals receiving care under this chapter.

Sec. 17. RCW 70.127.200 and 1988 c 245 s 21 are each amended to read as follows:

(1) Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a home health, hospice, hospice care center, or home care agency without ~~((a))~~ an in-home services agency license under this chapter.

(2) The injunction shall not relieve the person operating an in-home services agency without a license from criminal prosecution, or the imposition of a civil fine under section 19(2) of this act, but the remedy by injunction shall be in addition to any criminal liability or civil fine. A person that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be deposited in the department's local fee account. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. All fines, forfeitures, and penalties collected or assessed by a court because of a violation of RCW 70.127.020 shall be deposited in the department's local fee account.

Sec. 18. RCW 70.127.210 and 1988 c 245 s 22 are each amended to read as follows:

(1) Any person violating RCW 70.127.020 is guilty of a misdemeanor. Each day of a continuing violation is a separate violation.

(2) If any corporation conducts any activity for which a license is required by this chapter without the required license, it may be punished by forfeiture of its corporate charter. All fines, forfeitures, and penalties collected or assessed by a court because of a violation of RCW 70.127.020 shall be deposited in the department's local fee account.

NEW SECTION. Sec. 19. A new section is added to chapter 70.127 RCW to read as follows:

(1) The department may issue a notice of intention to issue a cease and desist order to any person whom the department has reason to believe is engaged in the unlicensed operation of an in-home services agency. The person to whom the notice of intent 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 intent to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the department 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.

(2) If the department makes a final determination that a person has engaged or is engaging in unlicensed operation of an in-home services agency, the department may issue a cease and desist order. In addition, the department may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed operation of an in-home services agency. The proceeds of such fines shall be deposited in the department's local fee account.

(3) If the department makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the department 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 department. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the department may enter a permanent cease and desist order, which may include a civil fine.

(4) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so operating an in-home services agency without a license from criminal prosecution, 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 operation 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.

NEW SECTION. Sec. 20. A new section is added to chapter 70.127 RCW to read as follows:

The legislature finds that the operation of an in-home services agency without a license in violation of this chapter is a matter vitally affecting the public interest

for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an in-home services agency without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 21. A new section is added to chapter 70.127 RCW to read as follows:

(1) Applicants desiring to operate a hospice care center are subject to the following:

(a) The application may only be made by a licensed hospice agency. The agency shall list which of the following service categories will be provided:

- (i) General inpatient care;
- (ii) Continuous home care;
- (iii) Routine home care; or
- (iv) Inpatient respite care;

(b) A certificate of need is required under chapter 70.38 RCW;

(c) A hospice agency may operate more than one hospice care center in its service area;

(d) For hospice agencies that operate a hospice care center, no more than forty-nine percent of patient care days, in the aggregate on a biennial basis, may be provided in the hospice care center;

(e) The maximum number of beds in a hospice care center is twenty;

(f) The maximum number of individuals per room is one, unless the individual requests a roommate;

(g) A hospice care center may either be owned or leased by a hospice agency. If the agency leases space, all delivery of interdisciplinary services, to include staffing and management, shall be done by the hospice agency; and

(h) A hospice care center may either be freestanding or a separate portion of another building.

(2) The department is authorized to develop rules to implement this section. The rules shall be specific to each hospice care center service category provided. The rules shall at least specifically address the following:

(a) Adequate space for family members to visit, meet, cook, share meals, and stay overnight with patients or clients;

(b) A separate external entrance, clearly identifiable to the public when part of an existing structure;

(c) Construction, maintenance, and operation of a hospice care center;

(d) Means to inform the public which hospice care center service categories are provided; and

(e) A registered nurse present twenty-four hours a day, seven days a week for hospice care centers delivering general inpatient services.

(3) Hospice agencies which as of January 1, 2000, operate the functional equivalent of a hospice care center through licensure as a hospital, under chapter 70.41 RCW, shall be exempt from the certificate of need requirement for hospice care centers if they apply for and receive a license as an in-home services agency to operate a hospice home care center by July 1, 2002.

Sec. 22. RCW 70.38.025 and 1997 c 210 s 2 are each amended to read as follows:

When used in this chapter, the terms defined in this section shall have the meanings indicated.

(1) "Board of health" means the state board of health created pursuant to chapter 43.20 RCW.

(2) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor) which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been made by purchase, such expenditure shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility which if acquired directly by such facility would be subject to certificate of need review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure.

(3) "Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service. A "continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(4) "Department" means the department of health.

(5) "Expenditure minimum" means, for the purposes of the certificate of need program, one million dollars adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule.

(6) "Health care facility" means hospices, hospice care centers, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state.

(7) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, section 1310(d) of the Public Health Services Act; or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(8) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services and as defined in federal law.

(9) "Health service area" means a geographic region appropriate for effective health planning which includes a broad range of health services.

(10) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(11) "Provider" generally means a health care professional or an organization, institution, or other entity providing health care but the precise definition for this term shall be established by rule of the department, consistent with federal law.

(12) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

(13) "Secretary" means the secretary of health or the secretary's designee.

(14) "Tertiary health service" means a specialized service that meets complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

(15) "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.

NEW SECTION. Sec. 23. A new section is added to chapter 70.38 RCW to read as follows:

All certificate of need applications submitted by hospice agencies for the construction, development, or other establishment of a facility to be licensed as either a hospital under chapter 70.41 RCW or as a nursing home under chapter 18.51 RCW, for the purpose of operating the functional equivalent of a hospice care center shall not require a separate certificate of need for a hospice care center provided the certificate of need application was declared complete prior to July 1, 2001, the applicant has been issued a certificate of need, and has applied for and received an in-home services agency license by July 1, 2002.

NEW SECTION. Sec. 24. This act takes effect January 1, 2002.

NEW SECTION. Sec. 25. The following acts or parts of acts are each repealed:

(1) RCW 70.127.060 (Nursing homes—Application of chapter) and 1988 c 245 s 7;

(2) RCW 70.127.070 (Hospitals—Application of chapter) and 1988 c 245 s 8;

(3) RCW 70.127.110 (Licenses—Combination—Rules—Fees) and 1999 c 190 s 4 & 1988 c 245 s 12;

(4) RCW 70.127.220 (Agency registry) and 1988 c 245 s 23;

(5) RCW 70.127.230 (Hospice agencies—Exemption for certain activities) and 1988 c 245 s 24;

(6) RCW 70.127.240 (Home health or hospice agencies—Exemption for certain activities) and 1988 c 245 s 27;

(7) RCW 70.127.250 (Home health agencies—Patient care and treatment—Rules—Definitions) and 1994 sp.s. c 9 s 745, 1993 c 42 s 10, & 1988 c 245 s 25;

(8) RCW 70.127.260 (Hospice agencies—Rules) and 1988 c 245 s 26; and

(9) RCW 70.127.270 (Home care agencies—Rules) and 1988 c 245 s 28.

Passed the House March 8, 2000.

Passed the Senate March 7, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 176

[House Bill 2532]

PILOT REGISTRATION FEES—VOLUNTEER RECOGNITION

AN ACT Relating to recognition of volunteer pilots; and amending RCW 47.68.233.

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

Sec. I. RCW 47.68.233 and 1987 c 220 s 2 are each amended to read as follows:

The department shall require that every pilot who is a resident of this state and every nonresident pilot who regularly operates any aircraft in this state be registered with the department. The department shall charge an annual fee not to exceed ten dollars for each registration. All registration certificates issued under this section shall be renewed annually during the month of the registrant's birthdate.

The registration fee imposed by this section shall be used by the department for the purpose of (a) search and rescue of lost and downed aircraft and airmen under the direction and supervision of the secretary (~~and~~), (b) safety and education, and (c) volunteer recognition and support.

Registration shall be effected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and in connection therewith shall prescribe requirements for the possession and exhibition of the certificates.

The provisions of this section do not apply to:

- (1) A pilot who operates an aircraft 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;
- (2) A pilot registered under the laws of a foreign country;
- (3) A pilot engaged exclusively in commercial flying constituting an act of interstate or foreign commerce;
- (4) A person piloting an aircraft equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a bona fide prospective purchaser.

Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties incident thereto.

Passed the House January 31, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 177
[House Bill 2657]
LICENSED DISTILLERS

AN ACT Relating to allowing a licensed distiller to hold a spirits, beer, and wine license; and reenacting and amending RCW 66.28.010.

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

Sec. 1. RCW 66.28.010 and 1998 c 127 s 1 and 1998 c 126 s 11 are each reenacted and amended to read as follows:

(1)(a) No manufacturer, importer, or distributor, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, or distributor own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, or distributor has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, or distributor shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or distributor as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing

practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, or distributor shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or distributor sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services

provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

Passed the House February 8, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 178

{Substitute House Bill 2358}

FUND RAISING--CHARITABLE ORGANIZATIONS

AN ACT Relating to fund raising events; and amending RCW 9.46.0233.

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

Sec. 1. RCW 9.46.0233 and 1987 c 4 s 24 are each amended to read as follows:

(1) "Fund raising event," as used in this chapter, means a fund raising event conducted during any seventy-two consecutive hours but exceeding twenty-four consecutive hours and not more than once in any calendar year or a fund raising event conducted not more than twice each calendar year for not more than twenty-four consecutive hours each time by a bona fide charitable or nonprofit organization as defined in RCW 9.46.0209 other than any agricultural fair referred to thereunder, upon authorization therefor by the commission, which the legislature hereby authorizes to issue a license therefor, with or without fee, permitting the following activities, or any of them, during such event: Bingo, amusement games, contests of chance, lotteries, and raffles(~~(- PROVIDED, That)~~). However: (a) Gross wagers and bets or revenue generated from participants under subsection (2) of this section received by the organization less the amount of money paid by the organization as winnings, or as payment for services or equipment rental under

subsection (2) of this section, and for the purchase cost of prizes given as winnings do not exceed ten thousand dollars during the total calendar days of such fund raising event in the calendar year; (b) such activities shall not include any mechanical gambling or lottery device activated by the insertion of a coin or by the insertion of any object purchased by any person taking a chance by gambling in respect to the device; (c) only bona fide members of the organization who are not paid for such service or persons licensed or approved by the commission under subsection (2) of this section shall participate in the management or operation of the activities, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization; and (d) such organization shall notify the appropriate local law enforcement agency of the time and place where such activities shall be conducted. The commission shall require an annual information report setting forth in detail the expenses incurred and the revenue received relative to the activities permitted.

(2) Bona fide charitable or nonprofit organizations may hire a person or vendor, who is licensed or approved by the commission, to organize and conduct a fund raising event on behalf of the sponsoring organization subject to the following restrictions:

(a) The person or vendor may not provide the facility for the event;

(b) The person or vendor may use paid personnel and may be compensated by a fixed fee determined prior to the event, but may not share in the proceeds of the event;

(c) All wagers must be made with scrip or chips having no cash value. At the end of the event, participants may be given the opportunity to purchase or otherwise redeem their scrip or chips for merchandise prizes;

(d) The value of all purchased prizes must not exceed ten percent of the gross revenue from the event; and

(e) Only members and guests of the sponsoring organization may participate in the event.

(3) Bona fide charitable or nonprofit organizations holding a license to conduct a fund raising event may join together to jointly conduct a fund raising event if:

(a) Approval to do so is received from the commission; and

(b) The method of dividing the income and expenditures and the method of recording and handling of funds are disclosed to the commission in the application for approval of the joint fund raising event and are approved by the commission.

The gross wagers and bets or revenue generated from participants under subsection (2) of this section received by the organizations less the amount of money paid by the organizations as winnings, or as payment for services or equipment rental under subsection (2) of this section, and for the purchase costs of prizes given as winnings may not exceed ten thousand dollars during the total calendar days of such event. The net receipts each organization receives shall count against the organization's annual limit stated in this subsection.

A joint fund raising event shall count against only the lead organization or organizations receiving fifty percent or more of the net receipts for the purposes of the number of such events an organization may conduct each year.

The commission may issue a joint license for a joint fund raising event and charge a license fee for such license according to a schedule of fees adopted by the commission which reflects the added cost to the commission of licensing more than one licensee for the event.

Passed the House February 9, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 179

[House Bill 2496]

CHARITABLE ORGANIZATIONS—DONATIONS OF BEER OR WINE

AN ACT Relating to the furnishing of wine or beer to nonprofit charitable organizations; and reenacting and amending RCW 66.28.040.

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

Sec. 1. RCW 66.28.040 and 1998 c 256 s 1 and 1998 c 126 s 12 are each reenacted and amended to read as follows:

Except as permitted by the board under RCW 66.20.010, no brewery, distributor, distiller, winery, importer, rectifier, or other manufacturer of liquor shall, within the state, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a brewery, distributor, winery, distiller, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a brewery, winery, distillery, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150 and 66.28.155; nothing in this section shall prevent a winery or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, to a nonprofit charitable

corporation or association exempt from taxation under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a brewer from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises.

Passed the House February 9, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 180

[Substitute House Bill 2649]

PUBLIC BENEFIT NONPROFIT CORPORATIONS—INFORMATION SERVICES

AN ACT Relating to providing information services to public benefit nonprofit corporations; and amending RCW 43.105.052.

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

Sec. 1. RCW 43.105.052 and 1999 c 80 s 6 are each amended to read as follows:

The department shall:

(1) Perform all duties and responsibilities the board delegates to the department, including but not limited to:

(a) The review of agency information technology portfolios and related requests; and

(b) Implementation of state-wide and interagency policies, standards, and guidelines;

(2) Make available information services to state agencies and local governments and public benefit nonprofit corporations on a full cost-recovery basis. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or political subdivision of another state. These services may include, but are not limited to:

(a) Telecommunications services for voice, data, and video;

(b) Mainframe computing services;

(c) Support for departmental and microcomputer evaluation, installation, and use;

(d) Equipment acquisition assistance, including leasing, brokering, and establishing master contracts;

(e) Facilities management services for information technology equipment, equipment repair, and maintenance service;

(f) Negotiation with local cable companies and local governments to provide for connection to local cable services to allow for access to these public and educational channels in the state;

(g) Office automation services;

(h) System development services; and

(i) Training.

These services are for discretionary use by customers and customers may elect other alternatives for service if those alternatives are more cost-effective or provide better service. Agencies may be required to use the backbone network portions of the telecommunications services during an initial start-up period not to exceed three years;

(3) Establish rates and fees for services provided by the department to assure that the services component of the department is self-supporting. A billing rate plan shall be developed for a two-year period to coincide with the budgeting process. The rate plan shall be subject to review at least annually by the customer advisory board. The rate plan shall show the proposed rates by each cost center and will show the components of the rate structure as mutually determined by the department and the customer advisory board. The same rate structure will apply to all user agencies of each cost center. The rate plan and any adjustments to rates shall be approved by the office of financial management. The services component shall not subsidize the operations of the strategic planning and policy component;

(4) With the advice of the information services board and agencies, develop a state strategic information technology plan and performance reports as required under RCW 43.105.160;

(5) Develop plans for the department's achievement of state-wide goals and objectives set forth in the state strategic information technology plan required under RCW 43.105.160. These plans shall address such services as telecommunications, central and distributed computing, local area networks, office automation, and end user computing. The department shall seek the advice of the customer advisory board and the board in the development of these plans;

(6) Under direction of the information services board and in collaboration with the department of personnel, and other agencies as may be appropriate, develop training plans and coordinate training programs that are responsive to the needs of agencies;

(7) Identify opportunities for the effective use of information services and coordinate appropriate responses to those opportunities;

(8) Assess agencies' projects, acquisitions, plans, information technology portfolios, or overall information processing performance as requested by the board, agencies, the director of financial management, or the legislature. Agencies may be required to reimburse the department for agency-requested reviews;

(9) Develop planning, budgeting, and expenditure reporting requirements, in conjunction with the office of financial management, for agencies to follow;

(10) Assist the office of financial management with budgetary and policy review of agency plans for information services;

(11) Provide staff support from the strategic planning and policy component to the board for:

- (a) Meeting preparation, notices, and minutes;
- (b) Promulgation of policies, standards, and guidelines adopted by the board;
- (c) Supervision of studies and reports requested by the board;
- (d) Conducting reviews and assessments as directed by the board;

(12) Be the lead agency in coordinating video telecommunications services for all state agencies and develop, pursuant to board policies, standards and common specifications for leased and purchased telecommunications equipment. The department shall not evaluate the merits of school curriculum, higher education course offerings, or other education and training programs proposed for transmission and/or reception using video telecommunications resources. Nothing in this section shall abrogate or abridge the legal responsibilities of licensees of telecommunications facilities as licensed by the federal communication commission on March 27, 1990; and

(13) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter.

Passed the House February 9, 2000.

Passed the Senate March 3, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 181

[House Bill 2765]

PORT DISTRICTS—REVENUE BONDS

AN ACT Relating to port district revenue bonds; and amending RCW 53.40.030.

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

Sec. 1. RCW 53.40.030 and 1983 c 167 s 137 are each amended to read as follows:

(1) The port commission shall determine the form, conditions, and denominations of all such bonds, the maturity date or dates which the bonds so sold shall bear, and the interest rate or rates thereon. It shall not be necessary that all bonds of the same authorized issue bear the same interest rate or rates. Principal and interest of the bonds shall be payable at such place or places as may be fixed and determined by the port commission. The bonds may contain provisions for registration thereof as to principal only or as to both principal and interest as provided in RCW 39.46.030. The bonds shall have interest payable at such time or times as may be determined by the port commission and in such amounts as it may prescribe. The port commission may provide for retirement of bonds issued under this chapter at any time or times prior to their maturity, and in such manner

and upon the payment of such premiums as may be fixed and determined by resolution of the port commission. The port commission may delegate authority to the chief executive officer of the port to approve the interest rate or rates, maturity date or dates, redemption rights, interest payment dates, and principal maturities under such terms and conditions approved by resolution of the port commission.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

Passed the House February 9, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 182

[House Bill 2397]

LOCAL GOVERNMENT FISCAL NOTES

AN ACT Relating to the process of preparing local government fiscal notes and the review of fiscal impacts of legislation; amending RCW 43.132.020, 43.132.040, and 43.132.060; adding new sections to chapter 43.132 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to enhance the local government fiscal note process by providing for updated fiscal information on pending legislation and to establish a process for a more comprehensive report on the fiscal impacts to local governments arising from laws that have been enacted. Further, it is the intent of the legislature that the varying effects of legislation on different local governments be recognized. This act is enacted in recognition of the responsibilities imposed by RCW 43.135.060.

Sec. 2. RCW 43.132.020 and 1995 c 399 s 79 are each amended to read as follows:

The director of financial management or the director's designee shall, in cooperation with appropriate legislative committees and legislative staff, establish a mechanism for the determination of the fiscal impact of proposed legislation which if enacted into law would directly or indirectly increase or decrease revenues received or expenditures incurred by counties, cities, towns, or any other (~~political subdivisions of the state~~) units of local government. The office of financial management shall, when requested by a member of the state legislature, report in writing as to such fiscal impact and said report shall be known as a "fiscal note".

Such fiscal notes shall indicate by fiscal year the total impact on the (~~subdivisions~~) local governments involved for the first two years the legislation would be in effect and also a cumulative six year forecast of the fiscal impact. Where feasible and applicable, the fiscal note also shall indicate the fiscal impact

on each individual county or on a representative sampling of cities, towns, or other ~~((political-subdivisions))~~ units of local government.

A fiscal note as defined in this section shall be provided only upon request of any member of the state legislature. A ~~((legislator-also-may))~~ request ~~((that-such))~~ for a fiscal note ~~((be-revised-to-reflect-the-impact-of-proposed-amendments-or-substitute-bills))~~ on legislation shall be considered to be a continuing request for a fiscal note on any formal alteration of the legislation in the form of amendments to the legislation that are adopted by a committee or a house of the legislature or a substitute version of such legislation that is adopted by a committee and preparation of the fiscal note on the prior version of the legislation shall stop, unless the legislator requesting the fiscal note specifies otherwise or the altered version is first adopted or enacted in the last week of a legislative session.

Fiscal notes shall be completed within ~~((seventy-two-hours))~~ one week of the request unless a longer time period is allowed by the requesting legislator. In the event a fiscal note has not been completed within ~~((seventy-two-hours))~~ one week of a request, a daily report shall be prepared for the requesting legislator by the director of financial management which report summarizes the progress in preparing the fiscal note. If the request is referred to the director of community, trade, and economic development, the daily report shall also include the date and time such referral was made.

Sec. 3. RCW 43.132.040 and 1986 c 158 s 18 are each amended to read as follows:

When a fiscal note is prepared and approved as to form and completeness by the director of financial management, the director shall transmit copies immediately to:

- (1) The requesting legislator;
- (2) With respect to proposed legislation held by the senate, the chairperson of the committee which holds or has acted upon the proposed legislation, the chairperson of the ways and means committee or equivalent committees with jurisdiction over matters normally considered by a ways and means committee, the chairperson of the local government committee or equivalent committee that considers local government matters, and the secretary of the senate; and
- (3) With respect to proposed legislation held by the house of representatives, the chairperson of the committee which holds or has acted upon the proposed legislation, the chairpersons of the ~~((revenue-and-taxation-and-appropriations-committees))~~ ways and means committee or equivalent committees with jurisdiction over matters normally considered by a ways and means committee, the chairperson of the local government committee or equivalent committee that considers local government matters, and the chief clerk of the house of representatives.

Sec. 4. RCW 43.132.060 and 1977 ex.s. c 19 s 6 are each amended to read as follows:

(1) Nothing in this chapter shall prevent either house of the legislature from acting on any bill or resolution before it as otherwise provided by the state Constitution, by law, and by the rules of the senate and house of representatives, nor shall the lack of any fiscal note as provided in this chapter or any error in the accuracy thereof affect the validity of any measure otherwise duly passed by the legislature.

(2) Subsection (1) of this section shall not alter the responsibilities of RCW 43.135.060.

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.132 RCW to read as follows:

(1) The office of financial management, in consultation with the department of community, trade, and economic development, shall annually prepare a report on the fiscal impacts to counties, cities, towns, and other units of local governments, arising from selected laws enacted in the preceding five-year period. The office of financial management, in consultation with the department of community, trade, and economic development, shall annually select up to five laws to include within this report from a recommended list of laws approved by the legislature. The office of financial management, in consultation with the department of community, trade, and economic development, may select up to five laws to include within this report if the legislature does not approve a recommended list.

(2) The preparation of the reports required in subsection (1) of this section is subject to available funding.

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.132 RCW to read as follows:

The office of financial management, in consultation with the department of community, trade, and economic development, shall prepare a report for the legislature on or before December 31st of every even-numbered year on local government fiscal notes, and reports on the fiscal impacts on local governments arising from selected laws, that were prepared over the preceding two-year period.

Passed the House February 8, 2000.

Passed the Senate February 28, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 183

[House Bill 2650]

STATE SURPLUS PERSONAL PROPERTY—INTERAGENCY TRANSFERS

AN ACT Relating to interagency transfers of state surplus personal property; and amending RCW 43.19.1919 and 43.09.210.

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

Sec. 1. RCW 43.19.1919 and 1997 c 264 s 2 are each amended to read as follows:

~~((Except as provided in RCW 28A.335.180 and 43.19.1920,))~~ The division of purchasing shall sell or exchange personal property belonging to the state for which the agency, office, department, or educational institution having custody thereof has no further use, at public or private sale, and cause the moneys realized from the sale of any such property to be paid into the fund from which such property was purchased or, if such fund no longer exists, into the state general fund~~((~~PROVIDED~~))~~. This requirement is subject to the following exceptions and limitations:

(1) This section does not apply to property under RCW 27.53.045, 28A.335.180, or 43.19.1920;

(2) Sales of capital assets may be made by the division of purchasing and a credit established in central stores for future purchases of capital items as provided for in RCW 43.19.190 through 43.19.1939~~((~~as now or hereafter amended~~; ~~PROVIDED FURTHER~~, That))~~;

(3) Personal property, excess to a state agency, including educational institutions, shall not be sold or disposed of prior to reasonable efforts by the division of purchasing to determine if other state agencies have a requirement for such personal property. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known. Surplus items may be disposed of without prior notification to state agencies if it is determined by the director of general administration to be in the best interest of the state. The division of purchasing shall maintain a record of disposed surplus property, including date and method of disposal, identity of any recipient, and approximate value of the property~~((~~PROVIDED FURTHER~~, That this section shall))~~;

(4) This section does not apply to personal property acquired by a state organization under federal grants and contracts if in conflict with special title provisions contained in such grants or contracts;

(5) A state agency having a surplus personal property asset with a fair market value of less than five hundred dollars may transfer the asset to another state agency without charging fair market value. A state agency conducting this action must maintain adequate records to comply with agency inventory procedures and state audit requirements.

~~((This section does not apply to property under RCW 27.53.045.))~~

Sec. 2. RCW 43.09.210 and 1965 c 8 s 43.09.210 are each amended to read as follows:

Separate accounts shall be kept for every appropriation or fund of a taxing or legislative body showing date and manner of each payment made therefrom, the name, address, and vocation of each person, organization, corporation, or association to whom paid, and for what purpose paid.

Separate accounts shall be kept for each department, public improvement, undertaking, institution, and public service industry under the jurisdiction of every taxing body.

All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value by the department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.

All unexpended balances of appropriations shall be transferred to the fund from which appropriated, whenever the account with an appropriation is closed.

This section does not apply to agency surplus personal property handled under RCW 43.19.1919(5).

Passed the House February 8, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 184

[Substitute House Bill 3099]

GOVERNMENT BONDS—INTEREST RATES

AN ACT Relating to extending provisions on interest rates on government bonds; amending RCW 39.96.010, 39.96.030, 39.96.070, 36.61.020, and 36.61.260; adding a new section to chapter 36.61 RCW; and providing an effective date.

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

Sec. 1. RCW 39.96.010 and 1995 c 192 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,)~~) involves 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 a period of (~~(seven))~~ twelve years.

Sec. 2. RCW 39.96.030 and 1993 c 273 s 3 are each amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, any governmental entity may enter into a payment agreement in connection with, or incidental to, the issuance, incurring, or carrying of specific obligations, for the purpose of managing or reducing the governmental entity's exposure to fluctuations or levels of interest rates. No governmental entity may carry on a business of acting as a dealer in payment agreements. Nothing in this chapter shall be construed to provide governmental entities with separate or additional authority to invest funds or moneys relating to or held in connection with any obligations.

(2) No governmental entity may enter into a payment agreement under this chapter unless it first:

(a) Finds and determines, by ordinance or resolution, that the payment agreement, if fully performed by all parties thereto, will (i) reduce the amount or duration of its exposure to changes in interest rates; or (ii) result in a lower net cost of borrowing with respect to the related obligations (~~(-or a higher net rate of return on investments made in connection with, or incidental to, the issuance, incurring, or carrying of those obligations));~~);

(b) Obtains, on or prior to the date of execution of the payment agreement, a written certification from a financial advisor that (i) the terms and conditions of the payment agreement and any ancillary agreements, including without limitation, the interest rate or rates and any other amounts payable thereunder, are commercially reasonable in light of then existing market conditions; and (ii) the finding and determination contained in the ordinance or resolution required by (a) of this subsection is reasonable.

(3) Prior to selecting the other party to a payment agreement, a governmental entity shall solicit and give due consideration to proposals from at least two entities that meet the criteria set forth in RCW 39.96.040(2). Such solicitation and consideration shall be conducted in such manner as the governmental entity shall determine is reasonable.

Sec. 3. RCW 39.96.070 and 1998 c 245 s 35 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, ~~((2000))~~ 2005.

(2) The termination of authority to enter payment agreements after June 30, ~~((2000))~~ 2005, 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, ~~((2000))~~ 2005, 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.

NEW SECTION. **Sec. 4.** A new section is added to chapter 36.61 RCW to read as follows:

To improve the ability of counties to finance long-term lake management objectives, lake management districts may be created for any needed period of time.

Sec. 5. RCW 36.61.020 and 1987 c 432 s 2 are each amended to read as follows:

Any county may create lake management districts to finance the improvement and maintenance of lakes located within or partially within the boundaries of the county. All or a portion of a lake and the adjacent land areas may be included within one or more lake management districts. More than one lake, or portions of lakes, and the adjacent land areas may be included in a single lake management district. ~~((A lake management district may be created for a period of up to ten years.))~~

Special assessments or rates and charges may be imposed on the property included within a lake management district to finance lake improvement and maintenance activities, including: (1) The control or removal of aquatic plants and vegetation; (2) water quality; (3) the control of water levels; (4) storm water diversion and treatment; (5) agricultural waste control; (6) studying lake water quality problems and solutions; (7) cleaning and maintaining ditches and streams entering or leaving the lake; and (8) the related administrative, engineering, legal, and operational costs, including the costs of creating the lake management district.

Special assessments or rates and charges may be imposed annually on all the land in a lake management district for the duration of the lake management district without a related issuance of lake management district bonds or revenue bonds. Special assessments also may be imposed in the manner of special assessments in a local improvement district with each landowner being given the choice of paying the entire special assessment in one payment, or to paying installments, with lake management district bonds being issued to obtain moneys not derived by the initial full payment of the special assessments, and the installments covering all of the costs related to issuing, selling, and redeeming the lake management district bonds.

Sec. 6. RCW 36.61.260 and 1985 c 398 s 26 are each amended to read as follows:

(1) Counties may issue lake management district bonds in accordance with this section. Lake management district bonds may be issued to obtain money sufficient to cover that portion of the special assessments that are not paid within the thirty-day period provided in RCW 36.61.190. ~~((The maximum term of lake management district bonds shall be ten years.))~~

Whenever lake management district bonds are proposed to be issued, the county legislative authority shall create a special fund or funds for the lake management district from which all or a portion of the costs of the lake improvement and maintenance activities shall be paid. Lake management district bonds shall not be issued in excess of the costs and expenses of the lake improvement and maintenance activities and shall not be issued prior to twenty

days after the thirty days allowed for the payment of special assessments without interest or penalties.

Lake management district bonds shall be exclusively payable from the special fund or funds and from a guaranty fund that the county may have created out of a portion of proceeds from the sale of the lake management district bonds.

(2) Lake management district bonds shall not constitute a general indebtedness of the county issuing the bond nor an obligation, general or special, of the state. The owner of any lake management district bond shall not have any claim for the payment thereof against the county that issues the bonds except for payment from the special assessments made for the lake improvement or maintenance activities for which the lake management district bond was issued and from a lake management district guaranty fund that may have been created. The county shall not be liable to the owner of any lake management district bond for any loss to the lake management district guaranty fund occurring in the lawful operation of the fund. The owner of a lake management district bond shall not have any claim against the state arising from the lake management district bond, special assessments, or guaranty fund. Tax revenues shall not be used to secure or guarantee the payment of the principal of or interest on lake management district bonds.

The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced on: (a) Each lake management district bond that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the lake management district bonds.

(3) If the county fails to make any principal or interest payments on any lake management district bond or to promptly collect any special assessment securing the bonds when due, the owner of the lake management district bond may obtain a writ of mandamus from any court of competent jurisdiction requiring the county to collect the special assessments, foreclose on the related lien, and make payments out of the special fund or guaranty fund if one exists. Any number of owners of lake management districts may join as plaintiffs.

(4) A county may create a lake management district bond guaranty fund for each issue of lake management district bonds. The guaranty fund shall only exist for the life of the lake management district bonds with which it is associated. A portion of the bond proceeds may be placed into a guaranty fund. Unused moneys remaining in the guaranty fund during the last two years of the installments shall be used to proportionally reduce the required level of installments and shall be transferred into the special fund into which installment payments are placed.

(5) Lake management district bonds shall be issued and sold in accordance with chapter 39.46 RCW. The authority to create a special fund or funds shall include the authority to create accounts within a fund.

NEW SECTION, Sec. 7. This act takes effect July 1, 2000.

Passed the House March 6, 2000.
Passed the Senate March 2, 2000.
Approved by the Governor March 27, 2000.
Filed in Office of Secretary of State March 27, 2000.

CHAPTER 185

[House Bill 2535]

PUBLIC IMPROVEMENT CONTRACTS—RETAINED FUNDS

AN ACT Relating to payment of retained percentages on public improvement contracts using the general contractor/construction manager method; and amending RCW 60.28.011.

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

Sec. 1. RCW 60.28.011 and 1994 c 101 s 1 are each amended to read as follows:

(1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check

representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all

contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.020 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue and the materialmen and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.060. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or materialperson who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services.

Passed the House February 10, 2000.
Passed the Senate February 29, 2000.
Approved by the Governor March 27, 2000.
Filed in Office of Secretary of State March 27, 2000.

CHAPTER 186

[Substitute House Bill 2604]

RETIREMENT ALLOWANCES—SURVIVOR BENEFIT OPTIONS

AN ACT Relating to options for payment of retirement allowances; amending RCW 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, and 43.43.278; creating a new section; and providing an effective date.

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

Sec. 1. RCW 41.26.460 and 1998 c 340 s 5 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, 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. 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) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. 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 unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

Sec. 2. RCW 41.32.530 and 1998 c 340 s 6 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) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this

subsection. 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 unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

NEW SECTION. Sec. 3. No later than July 1, 2000, the department of retirement systems shall allow a member who: (1) Has attained ninety years of age, and (2) elected to receive a reduced retirement allowance under RCW 41.32.530 and designated a nonspouse as survivor beneficiary, the opportunity to remove the survivor designation and have their future benefit adjusted.

Sec. 4. RCW 41.32.785 and 1998 c 340 s 7 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, 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. 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) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. 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 unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the

conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

Sec. 5. RCW 41.32.851 and 1995 c 239 s 108 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.32.875 or retirement for disability under RCW 41.32.880, 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.

(3) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the

conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

Sec. 6. RCW 41.35.220 and 1998 c 341 s 23 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.35.420 or 41.35.680 or retirement for disability under RCW 41.35.440 or 41.35.690, 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, 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 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) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. 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 unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

Sec. 7. RCW 41.40.188 and 1998 c 340 s 8 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, 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 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) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. 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 unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

Sec. 8. RCW 41.40.660 and 1998 c 340 s 9 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, 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 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) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. 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 unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

Sec. 9. RCW 43.43.278 and 1999 c 74 s 4 are each amended to read as follows:

By July 1, 2000, the department of retirement systems shall adopt rules that allow a member to select ~~((in lieu of benefits under RCW 43.43.270;))~~ an actuarially equivalent retirement option that pays the member a reduced retirement allowance and upon death shall be continued throughout the life of a lawful surviving spouse. The continuing allowance to the lawful surviving spouse shall be subject to the yearly increase provided by RCW 43.43.260(5) in lieu of the annual increase provided in RCW 43.43.272. The allowance to the lawful surviving spouse under this section, and the allowance for an eligible child or children under RCW 43.43.270, shall not be subject to the limit for combined benefits under RCW 43.43.270.

NEW SECTION. **Sec. 10.** Section 6 of this act takes effect September 1, 2000.

Passed the House March 7, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 187

[Engrossed Second Substitute House Bill 2109]

TRIBAL HOUSING—TAX EXEMPTION

AN ACT Relating to authorizing tax, levy, and execution exemptions for properties of Indian housing authorities designated for low-income housing program uses; amending RCW 35.82.210; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec. 1.** Affordable and accessible housing is of great concern and importance to the legislature and the people of this state. The legislature recognizes the important role housing authorities serve in creating and maintaining housing for low-income persons and senior citizens. The legislature finds that tribal housing authorities should be afforded the same exemptions from

tax as all other housing authorities and extends the exemption from state and local tax to tribal housing authorities.

Sec. 2. RCW 35.82.210 and 1965 c 7 s 35.82.210 are each amended to read as follows:

(1) The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof: PROVIDED, HOWEVER, That in lieu of such taxes an authority may agree to make payments to the city or the county or any such political subdivision for improvements, services and facilities furnished by such city, county or political subdivision for the benefit of a housing project, but in no event shall such payments exceed the amount last levied as the annual tax of such city, county or political subdivision upon the property included in said project prior to the time of its acquisition by the authority.

(2) For the sole purpose of the exemption from tax under this section:

(a) "Authority," in addition to the meaning in RCW 35.82.020, also means tribal housing authorities and intertribal housing authorities.

(b) "Intertribal housing authority" means a housing authority created by a consortium of tribal governments to operate and administer housing programs for persons of low income or senior citizens for and on behalf of such tribes.

(c) "Tribal government" means the governing body of a federally recognized Indian tribe.

(d) "Tribal housing authority" means the tribal government or an agency or branch of the tribal government that operates and administers housing programs for persons of low income or senior citizens.

NEW SECTION. Sec. 3. This act takes effect July 1, 2000.

Passed the House February 11, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

CHAPTER 188

{House Bill 2660}

STATE INVESTMENT BOARD—CRIMINAL HISTORY RECORD CHECK

AN ACT Relating to criminal history record checks of finalist candidates for certain staff positions of the state investment board; and amending RCW 43.33A.025.

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

Sec. I. RCW 43.33A.025 and 1999 c 226 s 1 are each amended to read as follows:

(1) Notwithstanding any provision of RCW 43.43.700 through 43.43.815, the state investment board (~~(may)~~) shall require a criminal history record check for conviction records through the Washington state patrol criminal identification

system, and through the federal bureau of investigation, for the purpose of conducting preemployment evaluations of ~~((prospective new appointees or employees))~~ each finalist candidate for a board staff position exempt from the provisions of chapter 41.06 RCW, or for any other position in which the employee will have authority for or access to: (a) Funds under the jurisdiction or responsibility of the investment board~~((;))~~; or ~~((tø))~~ (b) data or security systems of the investment board or designs for such systems. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card, which shall be forwarded by the state patrol to the federal bureau of investigation.

(2) Information received by the investment board pursuant to this section shall be made available by the investment board only to board employees involved in the selection, hiring, background investigation, or job assignment of the person who is the subject of the record check, or to that subject person, and it shall be used only for the purposes of making, supporting, or defending decisions regarding the appointment or hiring of persons for these positions, or securing any necessary bonds or other requirements for such employment. Otherwise, the reports, and information contained therein, shall remain confidential and shall not be subject to the disclosure requirements of chapter 42.17 RCW.

(3) Fees charged by the Washington state patrol, or the federal bureau of investigation, for conducting these investigations and providing these reports shall be paid by the investment board.

Passed the House February 8, 2000.
 Passed the Senate February 29, 2000.
 Approved by the Governor March 27, 2000.
 Filed in Office of Secretary of State March 27, 2000.

CHAPTER 189

[Substitute House Bill 2441]
 SUNSET REVIEW

AN ACT Relating to government accountability through the state sunset review process; amending RCW 43.131.020, 43.131.030, 43.131.040, 43.131.090, 43.131.100, 43.131.130, 43.131.150, and 43.131.900; adding new sections to chapter 43.131 RCW; repealing RCW 43.131.050, 43.131.060, 43.131.070, and 43.131.080; and providing an expiration date.

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

Sec. 1. RCW 43.131.020 and 1977 ex.s. c 289 s 2 are each amended to read as follows:

The state legislature finds that state ~~((agencies))~~ entities may fail to deliver services as effectively and efficiently as is expected by the general public and as originally contemplated by the legislature. It further finds that state government actions have produced a substantial increase in numbers of ~~((agencies))~~ entities, growth of programs, and proliferation of rules ~~((and regulations))~~, and that the entire process has evolved without sufficient legislative and executive oversight,

regulatory accountability, or a system of checks and balances. The legislature further finds that by establishing a system for the termination, continuation, or modification of state ~~((agencies))~~ entities, coupled with a system of scheduled review of such ~~((agencies))~~ entities, it will be in a better position to: Evaluate the need for the continued existence of existing and future state ~~((agencies))~~ entities; assess the effectiveness and performance of agencies, boards, commissions, and programs; and ensure public accountability. The legislature recognizes that the executive branch shares in this duty and responsibility to assure that state government operates in an efficient, orderly, and responsive manner.

Sec. 2. RCW 43.131.030 and 1983 1st ex.s. c 27 s 1 are each amended to read as follows:

As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise.

(1) ~~((“Committees of reference” means the standing legislative committees designated by the senate and house of representatives to consider termination, modification, or reestablishment of state agencies pursuant to this chapter.))~~ “Entity” includes every state office, department, board, commission, unit or subunit, and agency of the state, and where provided by law, programs and activities involving less than the full responsibility of a state agency. “Entity” also includes any part of the Revised Code of Washington scheduled for repeal, expiration, or program termination.

(2) “Person” includes every natural person, firm, partnership, corporation, association, or organization.

~~((3) “Regulatory entity” means any board, commission, agency, division, or other unit or subunit of state government which licenses or regulates one or more professions, occupations, industries, businesses, or other endeavors in the state of Washington.~~

~~((4) “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. 3. RCW 43.131.040 and 1983 1st ex.s. c 27 s 2 are each amended to read as follows:

Any state ~~((agency))~~ entity scheduled for termination by the processes provided in this chapter may be reestablished by the legislature for a specified period of time or indefinitely. The legislature may again review the state ~~((agency))~~ entity in a manner consistent with the provisions of this chapter and reestablish, modify, or consolidate such state ~~((agency))~~ entity or allow it to be terminated.

NEW SECTION. Sec. 4. A new section is added to chapter 43.131 RCW to read as follows:

The joint legislative audit and review committee shall conduct a program and fiscal review of any entity scheduled for termination under this chapter. This program and fiscal review shall be completed and a preliminary report prepared

during the calendar year prior to the date established for termination. These reports shall be prepared in the manner set forth in RCW 44.28.071 and 44.28.075. Upon completion of its preliminary report, the joint legislative audit and review committee shall transmit copies of the report to the office of financial management and any affected entity. The final report shall include the response, if any, of the affected entity and the office of financial management in the same manner as set forth in RCW 44.28.088, except the affected entity and the office of financial management shall have sixty days to respond to the report. The joint legislative audit and review committee shall transmit the final report to the legislature, to the state entity affected, to the governor, and to the state library.

NEW SECTION. Sec. 5. A new section is added to chapter 43.131 RCW to read as follows:

(1) Any entity may be scheduled for sunset termination and review under this chapter by law.

(2) An entity scheduled for sunset termination shall establish performance measures, as required under subsection (3) of this section, and must be evaluated, in part, in terms of the results. The entity has the burden of demonstrating the extent to which performance results have been achieved. The sunset termination legislation shall name a lead entity, if more than one entity is impacted by scheduled termination. The affected entity or lead entity has the responsibility for developing and implementing a data collection plan and submitting the resulting performance information to the joint legislative audit and review committee.

(3) An entity shall develop performance measures and a data collection plan and submit them for review and comment to the joint legislative audit and review committee within one year of the effective date of the legislation establishing the sunset termination.

(4) Unless specified otherwise, sunset terminations under this chapter shall be a minimum of seven years. The joint legislative audit and review committee shall complete its review in the year prior to the date of termination.

NEW SECTION. Sec. 6. A new section is added to chapter 43.131 RCW to read as follows:

(1) In conducting the review of an entity, the joint legislative audit and review committee shall determine the scope and objectives of the review and consider, but not be limited to, the following factors, if applicable:

(a) The extent to which the entity has complied with legislative intent;

(b) The extent to which the entity is operating in an efficient and economical manner which results in optimum performance;

(c) The extent to which the entity is operating in the public interest by controlling costs;

(d) The extent to which the entity duplicates the activities of other entities or of the private sector;

(e) The extent to which the entity is meeting the performance measures developed under section 5 of this act; and

(f) The possible impact of the termination or modification of the entity.

(2) After completing the review under subsection (1) of this section, the committee shall make its recommendations to the legislature.

Sec. 7. RCW 43.131.090 and 1993 c 281 s 54 are each amended to read as follows:

Unless the legislature specifies a shorter period of time, a terminated ~~((state agency))~~ entity shall continue in existence until June 30th of the next succeeding year for the purpose of concluding its affairs: PROVIDED, That the powers and authority of the ~~((state agency))~~ entity shall not be reduced or otherwise limited during this period. Unless otherwise provided:

(1) All employees of terminated ~~((state agencies))~~ entities classified under chapter 41.06 RCW, the state civil service law, shall be transferred as appropriate or as otherwise provided in the procedures adopted by the Washington personnel resources board pursuant to RCW 41.06.150;

(2) All documents and papers, equipment, or other tangible property in the possession of the terminated ~~((state agency))~~ entity shall be delivered to the custody of the ~~((agency))~~ entity assuming the responsibilities of the terminated ~~((agency))~~ entity or if such responsibilities have been eliminated, documents and papers shall be delivered to the state archivist and equipment or other tangible property to the department of general administration;

(3) All funds held by, or other moneys due to, the terminated ~~((state agency))~~ entity shall revert to the fund from which they were appropriated, or if that fund is abolished to the general fund;

(4) Notwithstanding the provisions of RCW 34.05.020, all rules made by a terminated ~~((state agency))~~ entity shall be repealed, without further action by the ~~((state agency))~~ entity, at the end of the period provided in this section, unless assumed and reaffirmed by the ~~((agency))~~ entity assuming the related legal responsibilities of the terminated ~~((state agency))~~ entity;

(5) All contractual rights and duties of ~~((a state agency))~~ an entity shall be assigned or delegated to the ~~((agency))~~ entity assuming the responsibilities of the terminated ~~((state agency))~~ entity, or if there is none to such ~~((agency))~~ entity as the governor shall direct.

Sec. 8. RCW 43.131.100 and 1977 ex.s. c 289 s 10 are each amended to read as follows:

This chapter shall not affect the right to institute or prosecute any cause of action by or against ~~((a state agency))~~ an entity terminated pursuant to this chapter if the cause of action arose prior to the end of the period provided in RCW 43.131.090. Such causes of action may be instituted, prosecuted, or defended in the name of the state of Washington by the office of the attorney general. Any hearing or other proceeding pending before ~~((a state agency))~~ an entity to be terminated and not completed before the end of the period provided in RCW 43.131.090, may be completed by the ~~((agency))~~ entity assuming the responsibilities of the terminated ~~((state agency))~~ entity.

Sec. 9. RCW 43.131.130 and 1977 ex.s. c 289 s 13 are each amended to read as follows:

Nothing in this chapter or RCW 43.06.010 (~~(as now or hereafter amended,)~~) shall prevent the legislature from abolishing or modifying (~~(a state agency)~~) an entity scheduled for termination prior to the (~~(agency's)~~) entity's established termination date or from abolishing or modifying any other (~~(state agency)~~) entity.

Sec. 10. RCW 43.131.150 and 1983 1st ex.s. c 27 s 8 are each amended to read as follows:

The (~~(state agencies and programs)~~) entities scheduled for termination under this chapter shall be subject to all of the processes provided in this chapter.

NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:

(1) RCW 43.131.050 (Joint legislative audit and review committee and office of financial management—Duties—Reports required) and 1996 c 288 s 43, 1990 c 297 s 2, 1979 c 22 s 1, & 1977 ex.s. c 289 s 5;

(2) RCW 43.131.060 (Joint legislative audit and review committee review of regulatory entity—Factors for consideration) and 1996 c 288 s 44, 1988 c 17 s 1, & 1977 ex.s. c 289 s 6;

(3) RCW 43.131.070 (Joint legislative audit and review committee review of a state agency other than a regulatory entity—Factors for consideration) and 1996 c 288 s 45 & 1977 ex.s. c 289 s 7; and

(4) RCW 43.131.080 (Committees of reference—Powers and duties) and 1996 c 288 s 46, 1989 c 175 s 109, 1983 1st ex.s. c 27 s 3, & 1977 ex.s. c 289 s 8.

Sec. 12. RCW 43.131.900 and 1988 c 17 s 2 are each amended to read as follows:

RCW 43.131.010 through 43.131.150 shall expire on June 30, (~~(2000)~~) 2015, unless extended by law for an additional fixed period of time.

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.

Passed the House March 8, 2000.

Passed the Senate February 29, 2000.

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